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THE

REPORTS OF THE COMMITTEES

OF

THE SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE THIRTY-FOURTH CONGRESS,

1855-'56.

IN TWO VOLUMES.

Volume 1 *contains Nos.* 1 *to* 197.
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THE REPORTS OF THE COMMITTEES

OF

THE SENATE OF THE UNITED STATES

FOR THE

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34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 198.

IN THE SENATE OF THE UNITED STATES.

JUNE 30, 1856.—Ordered to be printed.

Motion by Mr. JONES, of Tennessee, to print 10,000 additional copies referred to the Committee on Printing.

Mr. DOUGLAS made the following

REPORT.

[To accompany Bill S. 356.]

The Committee on Territories, to which was recommitted "a bill to authorize the people of the Territory of Kansas to form a constitution and State government, preparatory to their admission into the Union, when they have the requisite population;" and to which was referred "a bill to restore order and peace in Kansas;" and "a bill supplementary to 'an act to organize the Territories of Nebraska and Kansas,' and to provide for the faithful execution of the said act in the Territory of Kansas, according to the true intent and meaning thereof;" and an "amendment prepared by Mr. Seward, to the bill (S. 172,) 'to authorize the people of the Territory of Kansas to form a constitution and State government, preparatory to their admission into the Union, when they have the requisite population;'" and "an amendment" proposed by Mr. Toombs as a substitute for the last named bill, (S. 172,) have examined and considered the same, and beg leave to report:

The existing government in the Territory of Kansas was organized in pursuance of an act of Congress approved May 30, 1854, instituting temporary governments for the Territories of Nebraska and Kansas, preliminary to their admission into the Union on an equal footing with the original States, so soon as they should have the requisite population. The organic law of Kansas is identical with that of Nebraska in all its provisions and principles. Each is based on that great fundamental principle of self-government which underlies our whole system of republican institutions, as promulgated in the Declaration of Independence, consecrated by the blood of the revolution, and consolidated and firmly established by the Constitution of the United States. Each recognizes the right of the people thereof, while a Territory, to form and regulate their own domestic institutions in their own way, subject only to the Constitution of the United States, and to be received into the Union so soon as they should attain the requisite number of inhabitants, on an equal footing with the original States in all respects whatever. These two Territories were thus

organized in 1854 under the authority of the same act of Congress, with equal rights, privileges, and immunities, and with the same safeguards and guarantees for the quiet enjoyment of their liberties, without molestation by foreign interference or domestic violence.

In Nebraska the inhabitants have enjoyed all the blessings which it is possible for a law-abiding people to derive from the faithful administration of a wise and just government. Life, liberty, and property have been held sacred, the elective franchise has been preserved inviolate, and all the rights of the citizen have been protected against fraud or violence by laws of his own making. These are the legitimate fruits of the principle, the practical results of fidelity to the provisions of the Nebraska organic act. There was no foreign interference with their domestic affairs, no fraudulent attempt to control the elections by non-resident voters. Emigrant aid societies, with their affiliated associations and enormous capital, did not extend their operations to Nebraska, and hence there were no counter schemes formed to control the elections and force institutions upon the Territory regardless of the rights and wishes of the *bona fide* inhabitants. The principle of the organic law, the right of the people to manage their internal affairs and control their domestic concerns in obedience to the Federal Constitution, was permitted to have fair play, and work out its natural and legitimate results. Hence peace, security, and progress, in all the elements of prosperity in this Territory, have vindicated the wisdom and policy of the Nebraska act.

Fortunate would it have been for the peace and harmony of the republic, and still more fortunate for the unhappy people of Kansas, had they been permitted, in the undisturbed enjoyment of their acknowledged rights, to derive similar blessings from the same organic law. Your committee can perceive no reason why the same causes would not have produced like results in Kansas but for the misguided efforts of non-residents of the Territory, citizens of the different States, who had no moral or legal right to interfere with the elections and legislation of the Territory, to seize upon the legislative power through the ballot-box, and thus control the local and domestic institutions of a feeble and sparsely settled Territory. Upon this point we have had no reason to doubt, but much to strengthen and confirm, the correctness of the views contained in the report of the Committee on Territories of the 12th of March last, to wit:

"In tracing, step by step, the origin and history of these Kansas difficulties, your committee have been profoundly impressed with the significant fact, that each one has resulted from an attempt to violate or circumvent the principles and provisions of the act of Congress for the organization of Kansas and Nebraska. The leading idea and fundamental principle of the Kansas-Nebraska act, as expressed in the law itself, was *to leave the actual settlers and bona-fide inhabitants of each Territory "perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."* While this is declared to be "the true intent and meaning of the act," those who were opposed to allowing the people of the Territory, preparatory to their admission into the Union as a State, to decide the slavery question for themselves, failing to accom-

plish their purpose in the halls of Congress, and under the authority of the Constitution, immediately resorted in their respective States to unusual and extraordinary means to control the political destinies and shape the domestic institutions of Kansas, in defiance of the wishes and regardless of the rights of the people of that Territory as guarantied by their organic law. Combinations in one section of the Union to stimulate an unnatural and false system of emigration, with the view of controlling the elections, and forcing the domestic institutions of the Territory to assimilate to those of the non-slaveholding States, were followed, as might have been foreseen, by the use of similar means in the slaveholding States, to produce directly the opposite result. To these causes, and to these alone, in the opinion of your committee, may be traced the origin and progress of all the controversies and disturbances with which Kansas is now convulsed.

"If these unfortunate troubles have resulted as natural consequences from unauthorized and improper schemes of foreign interference with the internal affairs and domestic concerns of the Territory, it is apparent that the remedy must be sought in a strict adherence to the principles, and rigid enforcement of, the provisions of the organic law."

The correctness of this position in respect to the causes of "these Kansas difficulties," "*that each one has resulted from an attempt to violate or circumvent the principles and provisions of the Kansas-Nebraska act*," and that "*the remedy must be sought in a strict adherence to the principles, and rigid enforcement of, the provisions of that act*," is recognized and affirmed in the provisions of "*a bill to restore order and peace in Kansas*," introduced by the senator from Illinois (Mr. Trumbull) and referred to this committee. The first section provides "that for temporary purposes, and till Congress shall otherwise direct, the Territory of Kansas be, and the same hereby is, annexed to and made part of the Territory of Nebraska, and all the laws now in force in the Territory of Nebraska, and not locally inapplicable, are hereby extended to and over the Territory of Kansas, and shall have the same force and effect therein as they now have in Nebraska Territory," &c.

The second section provides that all offices in Kansas shall be vacated, and *recognizes the validity and binding force of the acts passed by the territorial legislature of Kansas*, but contains a repealing clause to take "effect on the passage of this act."

The bill does not propose to repeal the organic act of Kansas Territory, nor to restore the Missouri compromise, for the obvious reason that its sole object, as stated in the title, is "to restore order and peace in Kansas." Inasmuch as the passage of the Kansas-Nebraska act and the repeal of the Missouri compromise have produced "order and peace" in Nebraska, and could have had no influence in creating the present difficulties in Kansas, the repeal of the former and the restoration of the latter would not have accomplished the objects of the bill. On the contrary, the bill proceeds on the theory that the best, if not only, mode "to restore order and peace in Kansas," is to place the people of that Territory directly under the protection of the Nebraska act, according to the true intent and meaning thereof, and thus leave them "perfectly free to form and regulate their domestic

institutions in their own way, subject only to the Constitution of the United States, *with the right to come into the Union with or without slavery, as their Constitution may prescribe at the time of admission.*"

Your committee fully concur in the objects of the bill as thus understood and expressed, but perceive serious obstacles in the way of accomplishing those objects in the mode proposed. In the first place, the present difficulties in Kansas, although produced by the causes already stated, arise out of the fact that there is a large body of armed men in that Territory thoroughly organized for the avowed purpose of resisting to "a bloody issue" the laws and constituted authorities of the Territory, and to that end have established and put in partial operation an independent government in conflict with the government established by Congress and in defiance of its authority. If Kansas should be annexed to Nebraska, and still left under the same organic law, the difficulties are not removed so long as the rebellion continues and the revolutionary government exists in defiance of the authority of Congress. The effect would be to aggravate the evil and enlarge the theatre of its disasters.

Your committee can perceive no wisdom or justice in making the people of Nebraska involuntary parties to an organized system of lawless violence which they have had no agency in producing, and from the calamities of which they are entitled to be exempted by their fidelity to the Constitution and laws of the land. Besides, if the reasons assigned for refusing obedience to the laws of Kansas are well founded, the same objections would apply with much greater force to obeying the laws of Nebraska. If the assumption that some non-residents participated in the elections, and to that extent affected the legislation of Kansas, be a sufficient justification for resisting all the laws enacted by the legislature, the fact that none of the inhabitants of Kansas had any voice in making the laws of Nebraska, which it is now proposed to extend over them by an act of Congress, without their consent, would furnish a much more plausible pretext for resisting the laws of Nebraska. If it be said that some of the enactments of the Kansas legislature are obnoxious to that portion of the inhabitants who resist the constituted authorities in the execution of the laws of that Territory, what assurance have we that the same persons would not find fault with some of the enactments of the Nebraska legislature, and assign the double reason for refusing obedience to them; first, that they had no voice in making them, and second, that they were opposed to them, and would not obey any law they do not like. For the reasons stated, your committee cannot recommend the proposition to annex Kansas to Nebraska as a measure calculated "to restore order and peace in Kansas."

The next proposition in the order in which they were referred to to your committee is the "Bill supplementary to an act to organize the Territories of Nebraska and Kansas," introduced by the senator from Delaware, (Mr. Clayton.) This bill embraces two leading ideas, the one to reorganize the legislature of the Territory, and the other to admit Kansas into the Union on an equal footing with the original States, in compliance with the principles and provisions of the Kansas-Nebraska act, whenever it should be ascertained by a census that the

Territory contained a federal population of ninety-three thousand four hundred and twenty inhabitants. So much of the bill as relates to the admission of the State is, in substance, a copy of the one reported by the Committee on Territories on the 17th of March last, and hence may be assumed to possess all the advantages which may be fairly claimed for that proposition, and liable to whatever objections may be justly urged against it. That portion of the bill which provides for the reorganization of the legislature contains some wise and excellent provisions, especially those intended to guard the elective franchise against fraud and violence, and to ensure a free and fair expression of the popular voice through the ballot box; while others are liable to serious and fatal objections in consequence of their repugnance to the great principle embodied in the Kansas-Nebraska act, and affirmed in the preamble, although not sustained by all the provisions of the bill under consideration.

The next in order is "a bill supplementary to an act to organize the Territories of Nebraska and Kansas, and to provide for the faithful execution of the said act in the Territory of Kansas, according to the true intent and meaning thereof," introduced by the senator from Missouri, Mr. Geyer. This bill makes no provision for the admission of Kansas into the Union, and has for its main object efficient provisions for preserving the sanctity of the ballot box, and to throw such safeguards around the elective franchise as would effectually protect it from fraud, violence, intimidation, or any other improper influence, which would prevent a fair expression of the popular will in all elections in the Territory. Most of the provisions of this bill are admirably adapted to the objects in view, and, should it be determined to pass no law for the admission of Kansas into the Union, your committee would not hesitate to adopt most of them, with some modifications, as the best solution of the existing difficulties in Kansas.

The two remaining propositions referred to your committee relate to the same subject matter, and, although entirely different in their character, will be considered together. They are, first, an amendment in the form of a substitute, proposed by the senator from New York, (Mr. Seward,) to the bill reported by the Committee on Territories on the 17th of March last, and the other an amendment in the form of a substitute for the same bill, proposed by the senator from Georgia, (Mr. Toombs.) The amendment of the senator from New York, which he proposes as a substitute for the entire bill, provides for the immediate admission of Kansas into the Union, without making any provision for the formation of a constitution, or the establishment of a State government. It may be the intention of the author of this proposition to recognize and put in operation a paper framed at Topeka in October last, and called "a constitution of the State of Kansas," a portion of which has been presented to the Senate and referred to this committee, although the boundaries and territory described and embraced within the provisions of said pretended constitution are widely different from those described and provided for in the proposition of the senator from New York. For instance, while the State which the senator from New York proposes to admit is

described in his proposition to be bounded on the west by the 103d meridian of longitude, that provided for in the Topeka constitution extends several hundred miles beyond that meridian and joins the Territory of Utah, and meanders the summit of the Rocky Mountains for its western boundary, and thus embracing a Territory larger than the combined area of several of the New England States, which is not contained within the limits of the State proposed to be admitted by the amendment of the senator from New York. The fact that the amendment of that senator does not refer to the Topeka constitution, nor to any other constitution, nor to any supposed State government in Kansas, taken in connexion with this vast discrepancy in the boundaries and territory proposed to be embraced within the limits of the proposed State, would authorize the presumption that he proposes to ignore and reject the Topeka constitution and State government, at the same time that he subverts the territorial government established by Congress, and thus leave the inhabitants without any government, or law, or protection of any kind, free to defend their rights and settle all matters in dispute by the arbitrament of the sword. Such, in the opinion of your committee, would be the fair interpretation and inevitable effect of the proposition of the senator from New York, if it should unfortunately become the law of the land. If, on the other hand, he should revise and reconstruct his proposition in such a manner as to recognize and legalize the Topeka constitution and State government, it becomes important to inquire into the legality, regularity, and fairness of the proceedings, with the view of ascertaining whether it was the work of the whole body of the people of Kansas, or the act of a political party, or of a mere faction, being a small minority of the inhabitants, whose chief grievance consisted in the fact that they could not control the majority.

It is not pretended that any of the proceedings which resulted in the formation of the Topeka constitution were had in pursuance of law. The preliminary meetings, the calling of the convention, the appointment of delegates, the assembling of the convention, the formation of the constitution, the voting on its ratification, the election of officers under it—each and every step in the whole movement was not only without the authority of law, but a part of a scheme, openly and boldly avowed in their meetings and conventions, having for its object the subversion of the government established by authority of Congress in said Territory. They refused to recognize the validity of the laws of the Territory, or the authority of the officers appointed to carry them into effect. Hence there was no law prescribing the qualifications of voters, or excluding illegal votes, or prohibiting any person from voting as many times as he pleased, at as many different places as he chose on the same day. No law providing for the appointment of judges of elections, none prescribing the usual oath, no officer to administer the oath, and no law to punish its violation. In short, there was no regularity, no legality, no security for fairness, no safeguards against fraud in any of their proceedings. Besides, the whole movement was the work of a political party and not the action of the great body of the people irrespective of party. Their meetings were party meetings, their conventions were party conventions, their

resolutions were of a nature which necessarily precluded the co-operation of every man who felt it his duty to yield obedience to the laws and constituted authorities of the Territory under the organic act. Hence it was strictly a partizan movement—a movement of the law-resisting party in opposition to the law-abiding party. It was not a question between those who approved and those who disapproved the laws of the Kansas legislature; for many good citizens preferred obedience to a code of laws, a portion of which they did not approve, so long as they were held to be constitutional by the courts and remained upon the statute book, as a less evil than armed resistance and lawless violence. Thus it was a partizan movement—an organization of the law-resisting party against the law-abiding party; and the most that can be claimed for it is, that it received the sanction of a decided majority of its own party.

The question now arises, whether a constitution, made by a political party, without the authority of law, and under circumstances which afford no safeguards against fraud, and no guarantees of fairness, and raises no presumptions that it embodies the wishes and sentiments of a majority of the inhabitants, shall be forced, by an act of Congress, upon a whole people as their fundamental law, unalterable for nine years.

In the opinion of your committee, whenever a constitution shall be formed in any Territory, preparatory to its admission into the Union as a State, justice, the genius of our institutions, the whole theory of our republican system, imperatively demand that the voice of the people shall be fairly expressed, and their will embodied in that fundamental law, without fraud or violence, or intimidation, or any other improper or unlawful influence, and subject to no other restrictions than those imposed by the Constitution of the United States.

It is true that each party claimed, at the time the Topeka constitution was formed, and now claims, to have a large majority of the legal voters in Kansas, in opposition to the pretensions of the opposite party. Each party has always professed a willingness to test and decide this disputed point in respect to the majority, at the ballot box, whenever the elective franchise can be exercised in security and protected against illegal voting, fraud, and violence, and a fair expression of the popular voice thus obtained. The amendment proposed by the senator from Georgia, (Mr. Toombs,) as a substitute for the original bill of the committee, has been prepared expressly with reference to attaining this desirable result. Your committee have carefully examined and revised the proposition of the senator from Georgia, and made such alterations in its details as in their opinion would promote its efficiency, and now present an outline of its provisions to the consideration of the Senate. It provides for the appointment, by the President, with the advice and consent of the Senate, of five commissioners, whose duty it shall be to take an accurate census of all the persons authorized by the act to vote, and make a fair apportionment among the different counties according to the number of legal votes, and to cause the said apportionment, together with a list of all the legal voters in each county, (specifying the name of each

voter,) to be published and generally circulated throughout the Territory, and one copy to be deposited in the clerk's office of each county, and other copies posted up in at least three of the most public places in each voting precinct, to the end that every inhabitant of the Territory may have the opportunity of pointing out any error that may occur on said list, either of the omission or insertion of any name improperly, and apply to the commissioners to have the error corrected. The commissioners are then required to remain in session each day, (Sundays excepted,) until the 20th of October, at such places in the Territory as will be most convenient to the inhabitants, to hear complaints, examine witnesses, and correct all errors in the said lists of voters. When all the errors shall have been corrected, and the revised lists shall have been completed, the commissioners are required to have them published and generally circulated throughout the Territory before the day of election, and one copy thereof to be deposited in the clerk's office of each county, one copy to be delivered to each judge of election, and three copies to be posted up at each place of voting in the Territory.

The election of delegates to a convention to form a constitution is to take place in the month of November next, on the day of the presidential election, and no person is to be permitted to vote whose name does not appear on said corrected lists. Those who are entitled to have their names appear on said lists as legal voters, and who will have the right to vote, are all white male citizens of the United States, (including all persons who shall have taken the preliminary oath to become citizens in compliance with the naturalization laws of the United States,) over twenty-one years of age, and who were *bona fide* inhabitants of the Territory on the 4th day of July, 1856, and shall have been actual residents of the county three months next preceding the day of election. No other qualifications or tests are required for a voter.

The delegates are to assemble in convention at the seat of government of the Territory on the first day of December, and then to decide, first, whether it be expedient or not for Kansas to come into the Union at that time, and if deemed expedient, to proceed to form a constitution and State government, which shall be republican in form, preparatory to admission into the Union on an equal footing with the original States in all respects whatever. The board of commissioners, it is supposed, will be composed of men of the highest character for integrity and impartiality, and divided as nearly equal as may be between the great political parties of the country, with a view not only of ensuring entire fairness, but also of furnishing satisfactory evidence to the whole country that everything will be fairly and impartially done.

There are many other provisions in the bill, mostly matters of detail, but well devised and adapted to carrying out the main design. Among these is a bill of rights, copied from the Constitution of the United States and the amendments to that instrument, declaring that "no religious test shall ever be required as a qualification to any office or public trust;" that no law shall be of force or enforced in said

Territory "abridging the freedom of speech or of the press, or of the right of the people to assemble and to petition government for redress of grievances;" and that "the right of the people to keep and bear arms shall not be infringed," &c., &c.

Your committee will not weary the Senate with a summary of all the provisions and details of the proposition of the senator from Georgia in its revised form. It is believed to be well adapted to the object, and, if it becomes the law of the land, that it will insure a fair and impartial decision of the questions at issue in Kansas, in accordance with the wishes of the *bona fide* inhabitants of the Territory, without fraud, violence, or any other improper or unlawful influence.

The point upon which your committee have entertained the most serious and grave doubts in regard to the propriety of endorsing this proposition relates to the fact that, in the absence of any census of the inhabitants, there is reason to apprehend that the Territory does not contain sufficient population to entitle them to demand admission under the treaty with France, if we take the ratio of representation for a member of Congress as the rule. If, however, we are to regard this as the competing or antagonizing measure to the proposition of the senator from New York, (and we are inclined to the opinion that such is the view of the Senate,) your committee can have no hesitation in recommending its adoption. Nearly a whole year has elapsed since the initiatory steps were taken for the election of delegates and the holding the convention for the formation of the Topeka constitution. Nearly a year's emigration has since poured into that Territory, an emigration unparalleled in extent and character, stimulated in every portion of the Union by appeals to passion and interest, to ambition and patriotism, to every feeling and sentiment which could induce men to abandon the scenes of their childhood and the graves of their ancestors, and seek a home in a new and distant Territory, with the hope of improving their condition and controlling its destinies. Under these circumstances, it is but fair to assume that the population has more than doubled within that period, and that each man has gone there with the expectation and understanding that he was to have a voice and vote in the formation of its laws, institutions, and government, in accordance with the principles and provisions of the Kansas-Nebraska act.

The revised proposition of the senator from Georgia refers all matters in dispute to the decision of the present population, with guaranties of fairness and safeguards against frauds and violence, to which no reasonable man can find just ground of exception, while the senator from New York, if his proposition is designed to recognize and impart vitality to the Topeka constitution, proposes to disfranchise, not only all the emigrants who have arrived in the Territory this year, but all the law-abiding men who refused to join in an act of open rebellion against the constituted authorities of the Territory last year, by making the unauthorized and unlawful action of a political party the fundamental law of the whole people.

In view of all the difficulties and embarrassments which surround the question, and with the anxious desire to restore harmony and

fraternal feeling to the Union, and peace, quiet and security to Kansas, your committee recommend that the following be adopted in lieu of Senate bill No. 172.

Your committee ask to be discharged from the further consideration of the various bills and amendments referred to them in connexion with this subject, together with the Topeka constitution.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 198.

IN THE SENATE OF THE UNITED STATES.

JULY 1, 1856.—Submitted and ordered to be printed, and that 10,000 additional copies be printed with report No. 198.

Mr. COLLAMER made the following

REPORT.

VIEWS OF THE MINORITY.

Mr. Collamer, from the Committee on Territories, to whom was recommitted the bill (S. 172) "to authorize the people of the Territory of Kansas to form a constitution and State government preparatory to their admission into the Union when they have the requisite population;" and the amendment proposed thereto by Mr. Seward, and the amendment intended to be proposed by Mr. Toombs to the said bill, and to whom were referred the bill (S. 342) "to restore order and peace in Kansas;" the bill (S. 343) "supplementary to an act to organize the Territories of Nebraska and Kansas;" and the bill (S. 351) "supplementary to 'An Act to organize the Territories of Nebraska and Kansas,' and to provide for the faithful execution of the said act in the Territory of Kansas, according to the true intent and meaning thereof," submitted the following:

It is now proposed to pass the bill to enable the present inhabitants of Kansas to choose delegates to form a State constitution. It is well understood that the only topic of difficulty there, is the subject of domestic slavery. As there is not the number of inhabitants there to entitle them to a representative, according to our present apportionment, it is entirely a matter of congressional discretion whether a State shall be formed at this time.

If the state of circumstances there be such as to furnish a well founded expectation that a fair, just, and impartial expression of the opinions and wishes of the actual *bona fide* inhabitants of the Territory cannot now be obtained, then this experiment should not be attempted at this juncture of their affairs. A succinct statement of recent events in relation to that Territory, its present unhappy and unsettled condition, and the causes which have produced it, will fully show that no fair election of delegates, no just expression of opinion, no true decision, can, at present, be there obtained.

In 1854, when the bill establishing the territorial governments of Kansas and Nebraska was passed, it was enacted that they should, when admitted as States, be admitted "with or without slavery, as their constitution should provide." This, however, was not satisfac-

tory to the slaveholding States, and therefore that provision of the Missouri compromise which forbid slavery forever north of 36° 30′ north latitude, that bill of repose for which the slaveholding States had received and secured forever their consideration, and which had been sanctioned by thirty years of acquiescence, was repealed, and the novel experiment was professedly instituted of submitting the subject to the people who should come into the Territory. This was done to admit slavery into the Territory, which that compromise forbid. This breach of faith was effected by making another plight of faith, that is, by providing that the settlers of Kansas "should be *perfectly free* to form and regulate their domestic institutions in their own way."

Relying on this last national assurance, many people from free States, as well as from slave States, settled in Kansas, and how has that assurance been kept? Neither the Executive or Congress has redeemed that plighted faith or executed that law. I state, from information which I regard as entirely reliable, and as facts which I believe capable of the most unquestionable proof, which can at any time be presented, that of the 6,331 votes cast in March, 1855, for the election of the legislative assembly of Kansas, 4,921 of them were cast by armed bands of the inhabitants of Missouri, who invaded Kansas for that purpose on that occasion; that only 1,410 legal votes were cast and a majority of those were for the free State candidates, though most of the free State voters were driven from the polls. This invasion extended to all the council districts, and to all the representative districts but one, and elected and controlled a large majority of both houses. The people of the Territory have not been left free, but have been invaded and subjugated, and they are, and their institutions have been, controlled by the people of Missouri, through and by the tyrannic laws enacted by that assembly, and more tyrannically enforced by the officers by them appointed. These laws, so made by usurpation, the Executive of this government has aided to enforce and in Congress no relief has been granted. The complaints and representation of this usurpation and perversion of the organic act have been represented here as complaints of a mere irregularity, and been treated by the Senate with apparent indifference and neglect, as no measure even of inquiry into their truth has been instituted.

The people of Kansas thus oppressed and subjugated have complained and struggled in vain. They have done as they understood the people of other Territories had done before them, that is, formed a State constitution, inviting all to participate therein, and presented the same to Congress for admission. All such attempts have but brought down on them the reproach of being traitors and subvertors of authority.

Abandoned to their oppressors, the free State people of Kansas have been pursued by them in the same spirit which made the invasion. The acts of said assembly have by their officers been made the color for all forms of political persecution and oppression. Indictments for constructive treasons and pretended nuisances deprive them of liberty and destroy their property. Under the form of sheriff's posse, armed bands of people from without the Territory prowl over it and ke and destroy property and lives, and intimidate and drive off

the free State people. These people have thus, for several months past, been harrassed and scattered, and any attempt at self defence has been repressed by the army of the United States, or been declared *constructive treason*, and treated accordingly. The settlers have thus in large numbers been driven from their settlements and from the Territory. This is but a brief and feeble statement of the facts. A full picture of the public atrocities and private violence which have been committed with impunity upon the free State people of Kansas would excite and arouse the deepest sentiment of indignation.

It would seem to be demanded by a sense of common justice, and by what this nation owes as well to the cause of truth as to its own character and self-respect, that enquiry should be made, and usurpation be subdued, and the public faith be redeemed, by redressing all the wrongs produced by such means. This is not proposed, nor is the law of repose to be restored, or the constitution already formed to be allowed.

But, instead of this, it is now proposed to consummate the whole by leaving usurpation in possession of its power, and provide no security for those they imprison, oppress, and disperse, but provide that those *now* there, and those only, shall determine the definitive condition of that Territory by now forming a State constitution. This is but to encourage violence by rewarding it with success; that any result of such an experiment will produce definitive national peace and satisfaction is to suppose the people of this country blind to the power of ordinary discernment, or lost to every sentiment of justice and humanity.

J. COLLAMER.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 199.

IN THE SENATE OF THE UNITED STATES.

JULY 1, 1856.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 357.]

The Committee on Naval Affairs, to whom was referred the petition of Frederick Chatard, praying to be allowed certain sums of money disallowed at the treasury, in the adjustment of his accounts, have had the same under consideration, and thereupon report:

The petitioner, a lieutenant in the United States navy, under the order of the Secretary of the Navy, took command of the store-ship Fredonia in 1852, and carried out stores and troops to California.

In addition to the duties of commander of the ship, he was ordered to perform those of purser, though he expressly requested to be relieved from them, because of his want of familiarity with them and with accounts generally. In the performance of these duties, his attention being necessarily occupied with those of his command, he was constrained to depend almost entirely upon a clerk allowed him by the department, and hence several items of expenditure have been suspended in the adjustment of his accounts at the department—items which the petitioner advanced in good faith, and to forward the public interests, as he supposed. He received no additional pay or compensation whatever for performing the duties, but was held responsible, against his own consent, for their due performance; while, from his own ignorance, he was in the hands of his clerk.

The items disallowed amount to $583 54, and, under the circumstances of the case, your committee, satisfied that Mr. Chatard acted faithfully and with his best abilities for the public interests, should have those credits allowed in the adjustment of his accounts, and they eport a bill accordingly.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 200.

IN THE SENATE OF THE UNITED STATES.

JULY 2, 1856.—Ordered to be printed.

MR. JOHNSON made the following

REPORT.

[To accompany Bill S. 360.]

The Committee on Military Affairs, to whom was referred the petition of Thomas J. Churchill, having had the same under consideration, report:

The petition is as follows:

To the Honorable the Senate and the House of Representatives of the United States of America in Congress assembled:

The petition of the undersigned would respectfully present, that he was first lieutenant in the company of Captain William J. Heady, in the 1st regiment of Kentucky cavalry, commanded by Colonel Humphrey Marshall in the war with Mexico; that he continued with his company and performed the duties of said officer until he reached Port Lavacca, in Texas, when he was appointed by the colonel of said regiment to the office of commissary, a vacancy being occasioned by the death of Major Grant, who had previously held that office. Your petitioner thinks that he received his appointment some time in the month of September or October, and, as far as memory will enable him, (as he has no written statement by him to ascertain the fact,) he thinks it must have been in the former month; that on his arrival at Camargo, in Mexico, he was appointed, some time in December, to perform the duties of quartermaster, as the regular one had been transferred to another regiment, and that he continued most zealously, honestly, and faithfully to discharge the duties of both said offices, but which may be better known by reference to the staff officers and captains of said regiment; that on the twenty-seventh day of January, eighteen hundred and forty-seven, he was captured by the enemy at San Juan del Prado, in Mexico, together with seventeen men, on a scouting expedition under the command of Captain Heady. After his surrender he was marched to the city of Mexico and thrown into a dark and loathsome prison, after undergoing the severest fatigues, hardships, trials, and privations. That on General Scott's approach to that city he was taken from thence, together with other American officers, to Yolucca, a town further in the interior, where he remained

until his exchange was effected, together with other officers, by the commanding general, at the city of Mexico, in lieu of certain Mexican officers being released. After his capture, of course, it was utterly beyond his power to join his regiment, and after he was restored to liberty his regiment had been long since mustered out of the service. His papers and vouchers, which he had to show the amount of property which passed through his hands while he held those two offices, he concludes must have been either lost or destroyed in the confusion of the battle of Buena Vista, as he has never been able since to get them in his possession. With the statement of these facts, which he has plainly and clearly set before you, and regarding the peculiar circumstances of the case, your petitioner prays that you will pass an act for his benefit, relieving him from all liabilities. But should the department which has control of this business require or insist that my accounts must be closed in the ordinary manner, I feel that I am utterly and hopelessly ruined, as most, if not all of my papers, receipts, and vouchers, have either been lost or destroyed.

Most respectfully,

THOMAS J. CHURCHILL.

These statements of the capture, &c., of Lieutenant Churchill are confirmed by the report of Brigadier General Wool, and are fully sustained by the following letter from Hon. Humphrey Marshall, of the House of Representatives.

HOUSE OF REPRESENTATIVES, *January* 10, 1851.

SIR: I have examined the papers accompanying the petition of Thomas Churchill, of Arkansas, praying an act for his relief from liabilities to government, resulting from his employment as a staff officer in the regiment which served under my command in the war with Mexico.

Lieutenant Churchill was ordered by me to perform the duties of commissary, at Port Lavacca, in September, 1846, and he continued to discharge them until his capture in January, 1847. He also discharged the duties of assistant quartermaster from November, when Captain Robert Allen was relieved, until within a day or two of his capture, when he was relieved by Captain Bunch of the army. The quartermaster's stores with which he stands charged, according to General Jessup's letter, consisting of horses, mules, harness, saddles, &c., as well as tarpaulins, have, *without the slightest doubt*, been restored to the proper department, and have been disposed of by the United States. The committee are, I presume, apprised, from the character of the property charged, that it belonged to some transportation furnished to my regiment on the requisition of Mr. Churchill. The forage charged was, no doubt, used by the horses of the corps. His arms were lost, *I suppose*, in the capture. There were a great many vouchers, explaining the transactions of Mr. Churchill, which I secured after his capture and brought with me to Kentucky, but no opportunity of meeting with Mr. Churchill to deliver them occurred, and during the past year they were destroyed by the fire which con-

sumed my dwelling house; so that I imagine he has not a voucher to guide him in any attempt to adjust his unbalanced accounts.

I entertain no doubt whatever that every species of property and every cent of money which came to Mr. Churchill's hands as an officer was honestly and faithfully disbursed to the troops under my command; for I have had every opportunity to know Mr. Churchill *well*, and I bear cheerful testimony to his correctness of deportment, his unswerving integrity, his amiable character as a gentleman, and his high sense of honor, and his gallantry as a soldier. I knew no officer under my command more prompt at all times in the discharge of duty, more patient under hardship, or more exemplary in his bearing under every circumstance.

The committee will observe that the stores were to be issued to troops in campaign; the captains made their requisitions constantly on Churchill for subsistence for their commands, he being charged with them in the subsistence department. I never heard from my subaltern officers or men any complaint that they had not been furnished with rations when drawn for, and hence, also, I infer that all for which Mr. Churchill receipted he properly disbursed. I hope there will be no difficulty in granting him the relief he asks, as I feel sure the government will lose nothing thereby.

Very respectfully, &c.,

H. MARSHALL.

Hon. O. B. MATTESON.

The amounts for which Lieutenant Churchill is responsible to the government are as follows:

Quartermaster's department.

For forage, horses, mules, wagons, harness, &c. - -	$3,104 46

In subsistence department.

For subsistence and funds turned over to him by other officers - - - - - - - - - -	621 41

Ordnance department.

For a cavalry sabre and one pair of pistols - - -	32 00
	3,748 87

The committee, in view of all the circumstances of this case, consider it one eminently entitled to relief, and have reported a bill granting the prayer of the petitioner and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 201.

IN THE SENATE OF THE UNITED STATES.

JULY 7, 1856.—Ordered to be printed.

Mr. BELL made the following

REPORT.

[To accompany Bill S. 361.]

The Committee on Naval Affairs, to whom were referred the memorials of the representatives of General Nathan Towson, late of the army of the United States, deceased, and David R. Whitely, a member of his command, asking payment for the capture of the British brig Caledonia, have had the same under consideration, and report:

That the facts in support of the claims are embodied in the report of this committee made on the 14th February, 1855, which report is now submitted as a part of the present report, accompanied by a bill. It appears, by a certificate from the Fourth Auditor, herewith appended, that of the prize money awarded by the act of July 13, 1813, Captain Towson received four hundred dollars as his distributive share, but that the Caledonia was not included, although the pay roll was headed for both vessels. The act only appropriated twelve thousand dollars for the capture and destruction of the British brig Detroit, and no provision has ever been made for the capture of the Caledonia.

TREASURY DEPARTMENT,
Fourth Auditor's Office, June 17, 1856.

It appears by the files and records of this office that Nathaniel Towson, who held the rank of captain, received four hundred dollars as his distributive share of the prize money or "reward" appropriated by Congress for the capture of the British brigs "Detroit" and "Caledonia" to J. D. Elliot and the officers and men under his command. It appears, upon a reference to the Statutes at Large, vol. 3, page 4, chapter 8, that the appropriation was for the capture of the British brig "Detroit" *only*.

A. O. DAYTON,
Fourth Auditor.

IN SENATE, *February* 14, 1855.

The Committee on Naval Affairs, to whom were referred the memorials of General Nathan Towson, late of the army of the United States, deceased, and David R. Whitely, a member of his command, asking payment for the capture of the British brig Caledonia, have had the same under consideration, and report:

That it appears from the official account of Lieutenant Jesse D. Elliot, dated October 9, 1812, and other documents, that being in command of the public armed vessels at Black Rock, he conceived the idea of capturing two British brigs, the Detroit and Caledonia, which had just come down Lake Erie and anchored, the first about two miles above the fort, on the British side of the river, and the latter immediately under the guns of the fort.

That being short of force, Lieutenant Elliot applied to General Smyth for volunteers from the army. The artillery companies of Captains Towson and Barker were allowed to furnish part of the quota, whilst another portion was taken from the infantry. These artillery companies belonged to Colonel Scott's command. Captains Towson and Barker being of equal rank, the command was decided by lot, and the privilege was assigned to Captain Towson. [See the letter of General Winfield Scott, page 6, printed statement. See also the statement, page 8, of Major, then Captain J. N. Barker.] About thirty of the artillery were thus assigned to Captain Towson.

Two boats went off during the night of the 8th of October, 1812, on the expedition thus planned by Lieutenant Elliott—the lieutenant himself commanding one, (with the infantry on board,) and the other being in charge of Sailing-master Watts, with Captain Towson in charge of the artillerists.

After getting near the Caledonia, some hesitation was expressed by the sailing-master as to the possibility of reaching the brig, whereupon Captain Towson at once assumed the command of the boat, and ordered the men to pull alongside. [See the statement of David R. Whitely, one of the artillerists.] In a few minutes, after a severe conflict, in which one of his men was killed and eight others wounded; (one of them mortally,) Captain Towson succeeded in boarding and capturing the Caledonia, with her valuable cargo, valued by Lieutenant Elliot in his official dispatch at $200,000. Soon after this the Detroit surrendered to Captain Elliot.

The Detroit was afterwards burnt by order of Lieutenant Elliot, to save her from falling into the hands of the enemy; and a similar order was given by him in regard to the Caledonia, but Captain Towson not perceiving the necessity of this, took the responsibility of saving the latter, with her rich cargo, and she afterwards formed a part of Commodore Perry's fleet on Lake Erie, and rendered good service under Lieutenant Turner, in the brillant action of the 10th September, 1813. [See the statements of Captain Champlin, of the navy, and Major John G. Camp, of the quartermaster's department.] David R. Whitely, one of the artillerymen, whose opportunities of knowing all the circum-

stances seems to have been good, states that he is confident the success of the enterprise, so far as the Caledonia was concerned, was owing to the energy and unflinching courage of Captain Towson, who had the faculty of inspiring all his men with his own resolution and spirit.

The important part borne in this perilous enterprise by Captain Towson, on board the Caledonia, *not only in assuming the command at a critical moment, but in saving the vessel and rich cargo from destruction, at great personal hazard*, is well attested; and Generals Brown and Scott, Major Barker, Captain Champlin, and Major Camp, all concur in commendations of his valuable services to the country. Indeed, his fame is inseparable from the several brilliant actions which rendered the names of Brown and Scott illustrious in the campaign of 1814.

The value of the Caledonia is estimated by Captain Champlin at $15,000, *without her armament*, and by Major Camp at $30,000.

The cargo of the Caledonia was estimated by the news of the day at $200,000. It consisted of valuable furs and peltries. Major Camp states that the skins were used for the army and the fine furs sent to New York. Captain Towson himself stated his impression that a large portion of the cargo of the Coledonia was put into the public storehouses at Black Rock, and some of it burnt by the British. The part sent to New York city was sold by the United States marshal, and no part of the proceeds paid over to the captors. Captain Towson also states that a suit was instituted in the United States district court for the southern district of New York, and, after much delay, on a second trial, a verdict was rendered in favor of the captors of the Caledonia, but for what amount is not known; but that no part of it was ever paid over to the captors.

The present clerk of the United States court states that the books and papers of his office having been burnt, he is unable to give any information at present in regard to the suit aforesaid, but that the amount of the verdict was probably paid into the hands of Heron Rudd, who was clerk of the court from 1812 to 1816, and became a defaulter for about $60,000.

Captain Towson explains, in a letter, the reasons for his delay in making the application, and is desirous that Mrs. Elliott, the widow of Commodore Elliott, should also be provided for, so far as her husband was entitled for planning the expedition. Mrs. Elliott herself desires to be included, and refers to her papers, connected with an application which she was about to make, in the hands of an attorney, since deceased; but the main facts of the case are referred to as being part of the public records of the times.

On referring to the legislation of Congress on this subject, *it does not appear that any allowance has ever been made for the Caledonia or her cargo*. On July 13, 1813, Congress included in "An act to reward the officers and crew of the sloop-of-war Hornet," &c., a provision "to Lieutenant Elliott, his officers and companions, &c., the sum of $12,000 for the capture and destruction of the British brig Detroit."

In a joint resolution, approved January 29, 1813, Congress acknowledged the brilliant achievements of Captains Hull, Decatur, and Jones, in the capture of the British vessels Guerriere, Macedonia, and Frolic.

The second section of the said resolution authorized the President to present to Lieutenant Elliott, of the navy, an elegant sword with suitable emblems and devices, in testimony of the just sense entertained by Congress of his gallantry and good conduct in boarding and capturing the British brigs Detroit and Caledonia, whilst anchored under the protection of Fort Erie.

It is with reference to the part borne in this brilliant and hazardous affair by Captain Towson, that the statements of General Scott and Brown, and Major Barker, apply; and in regard to which General Brown said, in his letter of October 8, 1814, "the modesty of Captain Towson forbade him to urge his pretensions; *but the government gave intimation that a suitable notice would be taken of this meritorious act.*"

The delay in this application, as explained by General Towson, does not in any degree detract from the merit or justice of the claim now pending, the facts forming a part of the history of the country.

It is, therefore, recommended that a bill be passed directing payment to be made to the widow of the late Commodore Jesse D. Elliott, to the legal representatives of the late General Nathan Towson, and the other officers engaged in the enterprise, and to the sailors, soldiers, and volunteers accompanying them, according to the usages of the naval service in regard to captures from the enemy, for the capture and preservation of the brig Caledonia. The value of the cargo, or of such part as was applied to the use of the army, is not ascertained with sufficient precision to justify an allowance at present, and, therefore, no action upon this branch of the memorial is deemed advisable.

It was deemed proper, when the subject was under consideration at the last session, that in view of the gallant service, the high responsibility assumed by General (then Captain) Towson at a critical moment, and the important part performed by him, not only in the action itself, *but in saving the Caledonia for useful service in Commodore Perry's fleet*, that special distinction and an honorary reward were due from Congress to General Towson—Lieutenant Elliott having been thus honored as the projector of the enterprise—and the committee unanimously resolved to recommend the presentation of a sword to the gallant general; but before there was time for formal action upon the subject General Towson died, unaware of this intended mark of gratitude and respect. Whether the honor thus intended for the hero himself in his lifetime shall be transferred to his nearest male relative is reserved for future consideration.

In the meanwhile, the committee report a bill providing payment to the captors of the Caledonia for the value of said brig, to be paid according to the usages of the naval service.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 202.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. JONES, of IOWA, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Mrs. Michal Cartner, widow of Henry Cartner, praying a pension, beg leave to report:

That the name of one Henry Cartner is found enrolled on the muster rolls of Kentucky mounted volunteers, Wayne war, but there is no evidence that this is the husband of the petitioner, or that he contracted any disease, or was wounded during his service. The only act of Congress granting half pay to the widows and orphans of officers and soldiers of the Wayne war is the act of February 3, 1853, which requires proofs of death of officer or soldier from wounds received or disease contracted while in service, and in the line of duty. The petitioner offering no evidence of this fact, and asking a pension merely upon the grounds of services rendered, the committee report the following resolution:

Resolved, That the committee ask to be discharged from the further consideration of the petition.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 203.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Samuel Warner, praying relief on account of an injury received while in the naval service of the United States, beg leave to report:

That during the 26th Congress the same petition was referred to the Committee on Naval Affairs, when, after mature deliberation, the following report was submitted:

Report of the Committee on Naval Affairs on the bill for the relief of Samuel Warner, January 20, 1840.

"That on examination of the testimony in support of the bill, the committee deems it altogether unsatisfactory. It is derived from the mouth of a single witness, who declares that he is the sole survivor, besides the applicant, of all the officers, crew, and marines belonging to the Essex frigate and Connecticut sloop-of-war in the year 1800. It is remarkable, if true, that these two persons should be the sole survivors; and the testimony being altogether '*ex parte*,' it would be a rare accident, however false the allegation may be, if evidence to the contrary should fall into the hands of the committee. The petitioner represents that, *while in the performance of his duty he received a rupture of the abdomen*, (the witness describes the injury as a *wound received*, which the doctors called a rupture.) It does not appear that the witness was present, or pretends to have been present, when the injury complained of by petitioner was received; and there is nothing to show, allowing the rupture to have been complained of at that time by petitioner, that it was not an original constitutional infirmity, or the effect of some other cause previously existing. The suspicion that this may have been so, gathers strength from a certificate on file, made by a surgeon at the instance of petitioner in 1812, to exempt him from military duty. In this certificate it is stated that the petitioner is afflicted with rupture; but it is not said (as your committee thinks would have been natural had the fact been, as now alleged,) that the injury was received in the public service. The committee further thinks that special legislation is to be avoided save in the most

urgent and obvious cases. To say nothing of the doubtful propriety of the pension system, in any case, and to any extent, it is satisfied that the cases are few, not embraced by the general laws, to which it should be extended, and that the existence of such cases ought to be clearly proven. The committee, therefore, recommend that the bill for the relief of Samuel Warner do not pass."

The committee adopt the above report, and submit the following resolution:

Resolved, That the prayer of Samuel Warner be denied.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 204.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1856.—Ordered to be printed.

Mr. FOSTER made the following

REPORT:

[To accompany Bill S. 362.]

The Committee on Revolutionarg Claims, to whom was referred the petition of Mrs. Catherine V. R. Cochrane, sole surviving child of General Philip Schuyler, having had the same under consideration, do now report:

That General Schuyler, the father of the petitioner, rendered most important services, and made great pecuniary sacrifices during the war of the revolution, are facts familiar to all who are acquainted with the history of that period. In the campaign of 1777, when General Burgoyne commenced his march with an army in Canada, intending to meet General Clinton at Albany, General Schuyler, for some time, had the command of the American forces collected to oppose his progress. He was the owner of a large estate in the line of General Burgoyne's march, and furnished from his mills in the neighborhood the lumber for building the bridge across the Hudson at Bemise Heights; it was a structure of much importance and cost, being about half a mile in length. The mansion house, horses, and out buildings of General Schuyler, were all burned and destroyed by order of General Burgoyne; and the value of the property, as estimated by General Burgoyne, which was thus destroyed, was not less than ten thousand pounds sterling. Whether any payment was made General Schuyler on account of the material furnished for the bridge above mentioned, or any compensation made for the loss occasioned by the destruction of his property, your committee are unable to state. The books of the department make no mention of such payment or allowance.

In consequence, as the committee believe, of these severe losses, and the consequent embarrassment of his private affairs, General Schuyler tendered to Congress his resignation; it was not accepted, and he still retained his commission. Subsequently, he again tendered it, and in 1779 it was accepted. But for the embarrassment of his private affairs, resulting from the causes above specified, the committee have no doubt that General Schuyler would have remained in the service till the close of the war. In that event he would, of course, have

been entitled to five years' full pay, or to his commutation. In view of the causes which induced or compelled him to leave the service, the committee think that he and his representatives are entitled to the same consideration to which they would have been entitled had he remained in the service till the close of the war. They therefore report and recommend the passage of the accompanying bill, granting to the petitioner five years' pay. As the petitioner is the only surviving child—as she is aged and poor, the committee are of opinion that the payment should be made to her alone, instead of being divided among the heirs generally of General Schuyler.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 205.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1856.—Ordered to be printed.

Mr. PEARCE made the following

REPORT.

[To accompany Bill S. 363.]

The Committee on the Library, to whom was referred the resolution of the Senate directing them to inquire into the propriety of procuring a bust of the late Chief Justice John Rutledge, to be executed by an American artist of merit and reputation, to be placed in the room of the Supreme Court of the United States, report:

That Congress has thought fit to purchase busts of the Chief Justices as appropriate ornaments of the Supreme Court room and proper tributes of respect to the great men whose lives and services they commemorate. Accordingly these memorials of Jay, Ellsworth, and Marshall now adorn the hall of that tribunal. Of the Chief Justices who have passed from life John Rutledge is the only one whose memory has not been thus honored. In 1795 Mr. Rutledge was appointed by General Washington to succeed Mr. Jay, who had resigned the office. The new Chief Justice presided at the session of the Supreme Court which was held in the month of August succeeding his appointment. But two causes were argued and adjudged at this term, in one of which the Chief Justice delivered the opinion of the court. In the other, the opinions of all the judges, save one, were pronounced *seriatim*. At the ensuing session of the Senate the appointment of Mr. Rutledge was rejected by that body, whether for political reasons or because of the approach of that sad infirmity which wrecked his fine intellect, does not appear. This seems to be the only reason, and the committee think it an insufficient one, for declining to place the bust of Mr. Rutledge with those of the Chief Justices who preceded or followed him in this place of eminent responsibility and dignity. Short though his term of service was, he was not the less Chief Justice of the highest tribunal of judicature known to the Constitution. And if his public and professional career be considered, we shall find so much to admire as to be unwilling to refuse that tribute which has been paid to all others who have occupied the distinguished place which was assigned to him by the Father of his country.

The circumstances attending his appointment clearly prove the high estimate in which his judicial abilities and great public services were

held by Washington, whose severe judgment of public men was seldom or never deceived. As a revolutionary patriot and leader Mr. Rutledge had no superior. At the age of twenty-five he appeared as a deputy from South Carolina in the Congress called by Massachusetts after the passage of the stamp act—South Carolina being the first southern province which responded to this call. In this Congress commenced the budding of those principles of popular rights which were developed in the continental Congress of 1774. At this early period, Mr. Rutledge, already known at home as an able lawyer and fine speaker, acquired high reputation for parliamentary eloquence and ability, which he maintained and increased when a member of that memorable Congress which declared our separation from Great Britain. Here he was the prompt, earnest, and able advocate of colonial independence; in oratory the rival of Patrick Henry—in boldness and energy the peer of John Adams.

Returning home from Congress in the spring of 1775, he became a member of the provincial congress of South Carolina, and as chairman of a committee, raised for that purpose, reported a plan for an independent colonial government. Of this provisional government he was appointed president, and some years later, when the province was overrun by the troops of Great Britain, he was invested with dictatorial powers. History has recorded how well, wisely, and prudently he exercised these powers; how his activity and spirit had before contributed to the successful and glorious defence of Fort Moultrie; how gallantly he bore himself at the battle of Eutaw; and how fully, in every respect, he justified the liberal confidence reposed in him by his fellow citizens.

After the revolution, he was appointed a judge in chancery in his native State, which office he filled for seven years, when he became chief justice of the supreme court of South Carolina.

While he was one of the chancellors of South Carolina, he served in the convention which formed the Constitution of the United States, and was a very active and influential member of that body. On the organization of the federal government he was appointed by General Washington, and unanimously confirmed by the Senate, one of the associate justices of the Supreme Court of the United States. The committee have thought it unnecessary to do more than thus to glance at the public services which Mr. Rutledge performed in various departments of the government, State and federal. They give him a high place among the founders of the republic; while his judicial abilities and labors, and the fact that he actually held and exercised the office of chief justice seem to demand that he should not be omitted from the list of those whose busts adorn the Supreme Court room; they therefore recommend the passage of the following bill.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 206

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1856.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany Bill S. 364.]

The Committee on Post Offices and Post Roads, to which wvs referred the memorial of John Scott, beg leave to report:

That the memorialist seeks relief from a judgment obtained against him and his sureties for failing to carry into operation a contract for the conveyance of the mail on route No. 3503, from New Orleans to Key West.

It appears that, in 1852, an advertisement was issued, inviting proposals for conveying the mail by sea between New Orleans and Key West, and that the contract was awarded to the said Scott for the sum of $20,000. The route was a new one, and never having been in operation, it was difficult to estimate the worth of the service, and the sum proposed by Scott proved, by the subsequent experience of the department, to be more than one half less than was necessary for the support of the route. This fact, however, is not adverted to as a basis for the relief of the petitioner, but as explanatory, in part, of the difficulty he experienced in organizing the means to carry his contract into effect as promptly as might otherwise have been practicable. Immediately upon being informed that the contract was awarded to him, the petitioner proceeded diligently to prepare for its execution, and, in his efforts to obtain steamships suitable for the purpose, he visited New Orleans and all the principal northern cities as far as Portland. Finding it impossible to obtain suitable steamers at any reasonable price, and the limited interval for commencing service not affording time to build them, he applied for and obtained an extension of time till the 1st of March. He alleges further, that having been unfortunately taken sick at Washington, he was unable to continue his efforts, and did not succeed in effecting an arrangement for a suitable steamer until the middle of March, when he arranged with Captain Montgomery, who had a new steamer nearly completed at Baltimore, and informed the department of the arrangement, and that service would be commenced in five weeks. Before the expiration of that time, the department gave the contract to Samuel S. Green for $26,000 per annum, and instituted a suit against the petitioner for

damages, which suit resulted in the judgment from which he seeks relief.

The contract was made December 9, 1852, and required the commencement of service on the 15th of January following, an interval of only five weeks. The petitioner appears to have employed that very brief time diligently in the endeavor to obtain a suitable steamer, and having failed, obtained an extension of six weeks more, but in the meanwhile being being prostrated by sickness, he was disabled from pursuing his object, and did not effect an arrangement until a few days after the expiration of the time.

Upon an investigation of the history of the service since that time, it appears that no real damage was caused to the government, for the price at which the contract was awarded would have been totally insufficient to sustain the service. It seems that the contract was transferred, first, to James C. Green, for $26,000 per annum, who, after performing the service very irregularly for a few months failed, and it was relet to W. C. Templeton for $42,000, who also performed the service very irregularly; and that it was afterwards let to E. G. Rogers & Co. for $41,800, who have also failed, and no damages have been sought against either of these other parties.

Taking into view that the route was a new one, and that it was therefore difficult to estimate the proper value of the service; that the petitioner proceeded in perfect good faith and with great activity and devotion, and at a good deal of personal expense, to give effect to his engagement; and that his failure to commence the service within the brief time allotted was owing to a providential visitation, which prostrated him with sickness in the midst of his efforts, and that he had in fact notified the department of his having made suitable arrangements before the contract was transferred to Green; and considering, further, that the experience of the service has demonstrated that it was not possible to be performed for any sum approaching that at which the contract was awarded, and that no damages have been sought against any of the subsequent failing contractors, the committee have deemed it a suitable case for the application of a just public clemency, and accordingly recommend a remission of the penalty recovered against the petitioner, upon his paying the sum of one thousand dollars, which will cover all the reasonable expenses and inconvenience of the government in making the new arrangements.

A bill to that effect is herewith reported and its passage recommended by the committee.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 207.

IN THE SENATE OF THE UNITED STATES.

JULY 10, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

The Committee on Private Land Claims, to which was referred the petition of Silas Stockwell, praying that a certain land warrant issued to one William G. Shaw might be cancelled, and that a duplicate be issued to said petitioner, have had the same under consideration, and submit the following report:

It appears that William G. Shaw was entitled to bounty land under the act approved February 11, 1847, for services as volunteer in the war with Mexico; that on the 31st day of July, 1848, and prior to the issuing of the warrant, he executed a power of attorney to one Benjamin Wade, to assign the warrant, when issued, to the petitioner, the consideration for such assignment was an indebtedness to the petitioner and others, incurred prior to the execution of the power of attorney and the issuing of the warrant.

The ninth section of the act of Congress, approved February 11, 1847, under which the warrant issued, provides that "all sales, mortgages, powers, or other instruments of writing, going to affect the title or claim to any such bounty right, made or executed prior to the issue of such warrant or certificate, shall be null and void to all intents and purposes whatsoever; nor shall such claim to bounty right be in anywise affected or charged with or subject to the payment of any debt or claim incurred by the soldier prior to the issuing of such certificate or warrant."

The committee cannot consent to divest the said Shaw of his legal title to the warrant which issued in the name of said Shaw on the 28th day of October, 1848, being subsequent to the indebtedness and to the execution of the power of attorney.

The committee will not recommend the passage of a law to give validity to that which under the law is utterly null and void. Shaw, in whose name the warrant issued, is legally entitled to the same, and not a party to this petition. In vesting the title in the petitioner, Congress takes cognizance of, and passes upon, the rights of a person, not before or subject to Congress.

The committee therefore report back the petition, with a recommendation that the prayer be not granted.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 208.

IN THE SENATE OF THE UNITED STATES.

JULY 10, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

The Committee on Private Land Claims, to which was referred the petition of Sally C. Northup, praying that Congress will pass an act vesting in her the title to certain land warrants purchased by her at an administrator's sale, have had the same under consideration and submit the following report:

It appears that Henry S. Atwood, deceased, who was a brother of the petitioner, did during his lifetime, in the summer of 1848, purchase of various persons their rights to bounty land under the act of February 11, 1847, prior to the issuing of the warrant.

That said Atwood received powers of attorney, and also the certificates of discharge of the various persons from whom he purchased such rights.

That such powers of attorney authorized him to prosecute such claims for bounty land, to receive the warrants when issued and to dispose of the same for his own benefit. Under these various powers of attorney there were sent to him sixty-nine warrants for one hundred and sixty acres each, issued in the names of the persons respectively entitled thereto, and bearing date in June, 1849, and one other warrant for one hundred and sixty acres, issued on August 17, 1850, making in all seventy warrants, calling for one hundred and sixty acres each, and that he held possession of these warrants at the date of his death, which occurred on September 3, 1851.

The said Atwood was in possession of these warrants from June or July, 1849, to September, 1851, without using any exertion to obtain proper assignments therefor.

The ninth section of the act entitled "An act to raise for a limited time an additional military force, and for other purposes," approved February 11, 1847, among other things, provides "that, in the event of the death of any such non-commissioned officer, musician, or private, during service, or after his discharge and before the issuing of a certificate or warrant as aforesaid, the said certificate or warrant shall be issued in favor and inure to the benefit of his family or relatives according to the following rules: First, to the widow and to his children; second, his father; third, his mother. * * * And all sales, mortgages, powers, or other instruments of writing going to affect the title or claim to any such bounty right, made or executed

prior to the issue of such warrant or certificate, shall be null and void to all intents and purposes whatsoever; nor shall such claim to bounty right be in any wise affected by, or charged with, or subject to the payment of any debt or claim incurred by the soldier prior to the issuing of such certificate or warrant."

The said Atwood, therefore, in the purchase of these claims to bounty right, was acting in violation of law—a law which must have been known to him—and he could have no right to think that Congress would pass an act legalizing the transfer of such claims to bounty right when, in the act providing for such bounty, they declared such transfer, before the issuing of the warrant, was "null and void to all intents and purposes whatsoever." The petitioner was well advised of the law at the time of the purchase from the administrator, and that a transfer of the warrants by such administrator was utterly void, so that the petitioner does not come here for relief as an innocent purchaser for a valuable consideration.

To have vested the title of these warrants, by special act of Congress, in the said Atwood in his lifetime would have been rewarding him for a wilful violation of law; it would be giving force and validity to that which Congress had expressly declared "null and void."

To vest the title now in the petitioner, would be giving validity and effect to a contract, when it was known, at the date of its execution, that it was utterly null and void.

To authorize a court to decree the title in favor of the petitioner, Congress would be granting power to a court to do indirectly that which your committee think Congress would not do directly; it is only another means of giving validity to that which had no validity.

The parties to whom the warrants were issued can legally claim such warrants, or in case of their death, their heirs or legal representatives; so that, if Congress should vest the title of these warrants in the petitioner, the parties legally entitled thereto could, at any time, demand the bounty land to which they are entitled under the law.

If any person in whose name the warrant issued died after the application for bounty land, but before such warrant issued then the claim to bounty right would have inured to the benefit of the widow and heirs of such deceased person.

Your committee are of opinion that, in whatever view you take of this case, it would be bad policy, if not highly unjust, to grant the prayer of the petitioner. They have, therefore, directed me to report back the memorial, with a recommendation that the prayer be not granted.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 209.

IN THE SENATE OF THE UNITED STATES.

JULY 10, 1856.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 368.]

The Committee on Foreign Relations, who were instructed by a resolution of the Senate of May 26, 1856, *"to inquire into and report to the Senate what alterations, if any, they may deem necessary or expedient in the act entitled 'An act to remodel the diplomatic and consular systems of the United States,' approved March* 1, 1855, *so far as the diplomatic service is affected by said act," have had the same under consideration, and now report:*

With a view to avail themselves of the experience and information of the Department of State touching the subject committed to them, the committee communicated the resolution of the Senate to the Secretary of State, asking for his views as to the alterations in said act that might be supposed proper, and received in reply the annexed letter, being a copy of one addressed by the Secretary of State to the chairman of the Committee on Foreign Relations in the House of Representatives in reply to a like inquiry.

The committee entirely adopt the views of the department as therein set forth, and report a bill accordingly.

DEPARTMENT OF STATE,
Washington, May 23, 1856.

SIR: I transmit a copy of a bill, which has been prepared at this department, and which is recommended as a substitute for that part of the act of last session which relates to the diplomatic service of the United States. The most striking peculiarity in that act is its commanding the President to appoint envoys extraordinary and ministers plenipotentiary to all the governments with which the United States had diplomatic relations, save that of the Sandwich Islands, to which the same act directs him to send a commissioner, in conformity with previous practice. It seems to have escaped attention that this provision is not in accordance with the Constitution. The President has entire discretion conferred in him by the Constitution of the United States, both as to the countries to which he might deem it advisable to send diplomatic agents, and as to the grades to be conferred upon them. In confiding this discretion to him, it no doubt was presumed

that from his elevated position he would be enabled to take a more comprehensive, and at the same time a more correct, view of the foreign affairs of the country than any other person.

The object of diplomatic missions is to adjust differences and conduct affairs between governments in regard to their political and commercial relations, and to furnish the government at home with information touching the country to which the mission is accredited more full and accurate than might be obtained through the ordinary channels, or more promptly than the same information might otherwise be received. The grade of a mission may be higher or lower, according to the estimate of its importance.

As a general rule, no government sends to, or, at least, continues in another country a minister of a higher grade than that country may reciprocate. This rule, however, is by no means invariable, and, for various reasons, it seems to be proper to leave it to the President to determine the cases in which exceptions ought to be made. There are not sufficient advantages in having ministers of the highest grade accredited to all governments, the most inconsiderable as well as the most important, to justify a departure from a long practiced and common usage, with many good reasons to sustain it.

The act of Congress of 1810 provided for the salaries and outfits of envoys extraordinary and ministers plenipotentiary and of chargé d'affaires only, and made the salaries of those officers the same, without regard to the country to which they might be sent. It made no provision for a minister resident. It is obvious, however, that circumstances might and do render it proper for us to have diplomatic agents of this grade. Perhaps it is not necessary that the compensation of ministers resident or chargé d'affaires should be different in different countries. If, therefore, the first section of the act referred to were to be amended so as to limit the salary of an envoy extraordinary and minister plenipotentiary as specified in the bill, the salary of a minister resident at seven thousand five hundred dollars, and of the chargé d'affaires at four thousand five hundred dollars, the existing wants of the service in that respect would, it is believed, be amply provided for. It is also recommended that there be a clerk, besides the secretary of legation, allowed to the missions at London and Paris, at the rate of compensation mentioned in the bill.

It is believed to be impracticable for one secretary to perform well all the clerical duties at London or Paris. Every dispatch addressed by the minister at those points to this department, with its accompanying papers, has to be copied by the secretary, and the dispatch itself recorded. The same course must be pursued in regard to the notes addressed by the minister to the government to which he is accredited, to other members of the diplomatic body at the place of his residence, and to consuls, citizens, and others on public business. As much of the time, however, of the secretaries of legation at those places is occupied in attending to passports for their own countrymen, travellers, or residents, and to other business consequent upon the incessant throng of citizens of the United States at London and Paris, they need an assistant in the clerical duties of the legation. The proposed addition to, and the increase of, the salaries of secretaries of

legation at other points, taken in connexion with the omission, which will probably be deemed advisable, to allow secretaries at some of the places where they were allowed by the act of the last session, would render the annual appropriation for this branch of the service considerably less than the aggregate amount which would be otherwise required.

I have the honor to be, sir, your obedient servant,

W. L. MARCY.

Hon. A. M. C. PENNINGTON,
Chairman of the Committee of Foreign Affairs,
House of Representatives.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 210.

IN THE SENATE OF THE UNITED STATES.

JULY 10, 1856.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 369]

The Committee on Private Land Claims, to which was referred the "petition of Laurent Millaudon, praying confirmation of his title to certain lands in Alabama," have had the same under consideration and submit the following report:

The committee find the facts in this case set forth in a report submitted by Mr. Clay, of Alabama, from the Committee on Public aLnds, at the 2d session of the 25th Congress, (Senate Documents, vol. 4, 1837–'8,) which are as follows: "Under the provisions of the act of 1812, authorizing the investigation of land titles south of the 31st degree, and east of the Mississippi, an individual, without any authority for so doing, filed two alleged Spanish permits for lands on the east side of the Mobile bay, in favor of J. B. Lorendine in the behalf of the Baron de Feriot; these claims were favorably reported upon by Commissioner Crawford," and communicated to the House of Representatives on the 5th day of January, 1816. In which report the said claims were numbered 90 and 91 of the 3d class.—(American State Papers, public lands, vol. 3, page 11.) "Subsequent to this report, but before Congress had any action thereon, one Arthur L. Simms became the purchaser of the right of De Feriot to the lands; and on the 3d of March, 1819, Congress passed an act confirming all the claims so favorable reported by the commissioner; and, under that act the claims were regularly surveyed by the proper officers in 1830, and confirmed by the surveyor general in 1835, and are represented on the plats of the public surveys as the De Feriot claims, in township C, south of range 2 east, in the St. Stephen's district, Alabama. Subsequent, to this, to wit: on the 20th of March 1837, Laurent Millaudon, relying upon the representations made to him of the genuineness of those claims, and upon all the previous action of the officers of the government and of Congress, by which they were declared to be valid and good titles, and as covering lands to which the government had no claim, became the purchaser of certain portions of the same from Simms. Doubts having afterwards arisen as to the justice of these claims, with a view of securing the lands, pre-emption floats were laid

thereon. Under the titles thus purchased by Mr. Millaudon, and believed by him to be most unimpeachable, he went on in making the most extensive preparations to establish a city upon those lands, and it appears to the committee, from the evidence adduced by him, that in this enterprise he has already actually expended upwards of $100,000. In March last, the question as to the validity of the De Feriot titles being brought before the General Land Office for consideration, that office required a report from the land officers at St. Stephens, upon all the facts and evidence in the case, and it satisfactorily appearing from that report and accompanying documents that these claims of De Feriot were fraudulent in themselves, one purporting to be founded on a grant from Cayetano Perez, in 1800, when he was first in office, for twenty-two days, in December, 1803, as commandant *ad interim*, and was not in office as commandant of the post until 1809, and the other being only a permission for the temporary use of a tract of six or seven arpens on the Bayou Fra, or Froid, for a cow-pen, for the security of cattle, during an apprehended incursion of a band of Indians, the General Land Office decided that the De Feriot titles, being fraudulent, conveyed no title to the present holders under them. In the correctness of this decision (if the question had been an original one, and independent of the act of the Commissioner and the act of Congress of 1819) the committee, after examining the report and documents upon which it is founded, fully concur, as they also do in the decision of the same office, that as the lands were represented upon the plats as private claims, and have not been surveyed into sections, &c., as public lands, they were not subject to be floated on under the provisions of the pre-emption law, and no right to the land was acquired by those floats being placed thereon.

"From these decisions it results that Mr. Millaudon, an innocent purchaser of title, which he had every reason to believe, from all the previous action of the government thereon, was a perfect one, after an outlay of upwards of one hundred thousand dollars upon the land, now finds that that title, if not void, is at least questionable, and that all his expenditure is upon lands, perhaps, belonging to the United States."

The lands embraced within the two De Feriot claims, as surveyed in 1830 and confirmed by the surveyor general in 1835, are still the property of the United States, with the exception of a strip off of the north end thereof, which is covered by a confirmation to William Patterson.

In view of the fact that these claims were reported for confirmation by the Commissioner, confirmed by the act of Congress of 1819, surveyed and confirmed by the Surveyor General of the United States, and reserved and set apart by the General Land Office for a satisfaction of these claims, together with the further fact that the claimant is an innocent purchaser, for a valuable consideration, the committee are of opinion that Congress ought to confirm the title of these lands, according to said survey of 1830, to the person or persons claiming said title, except to the extent that the said Patterson claim, as at present located, interferes and encroaches upon the De Feriot claims, as surveyed in 1830; they herewith report a bill for that purpose and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 211.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. EVANS made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Betsey Murch, and Ebenezer Murch, heirs of Lieutenant Ebenezer Murch, of the revolution, having had the same under consideration, report:

The petitioner, Betsey Murch, sets forth in her petition that she is the daughter and, with her brother Ebenezer Murch, are the sole heirs of Lieutenant Ebenezer Murch, who, as she alleges, served in the revolutionary war, and rendered valuable services in enlisting men with his own money, whereby his fortune was much impaired and his health destroyed; that he lived to the year 1824, and might have received a pension under the act of 1818, but that, as he conceived, would degrade him to the level of a pauper, which his proud spirit could not submit to; that, in consequence of these facts, he died poor, and left his family in a destitute condition, from which they pray to be relieved by Congress passing an act for their relief. There is no evidence accompanying the petition, except the affidavit of John Cressey, Samuel Murch, and William Warren, who were well acquainted with Ebenezer Murch, who in his old age was poor and much afflicted with rheumatism, supposed to be the result of exposure during the revolutionary war; and that in his old age both he and his wife were supported mainly by the petitioner, Betsey Murch.

There is no allegation in the petition that Lieutenant Ebenezer Murch served in the continental line of any State, or that he served to the end of the war, nor does his name appear on the list of officers who were entitled to or received the commutation. Neither he or his children have therefore any claim to half pay or commutation, under the resolutions of 1780 and 1783. Nor do your committee perceive, from the facts stated, that they are entitled to a pension under any of the acts of Congress on that subject. Lieutenant Murch may have been and was a meritorious man, and may have made sacrifices of time and money and health in the service of his country, and the petitioners may be poor, and their poverty may in some degree have grown out of the sacrifices of their father, but it cannot be that all such persons have claims on the public treasury for relief against the losses and suffering necessarily incident to the war of the revolution. Your committee, therefore, are constrained to recommend that the prayer of the *petition be refused.*

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 212.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of John R. Tucker, praying the passage of an act granting him compensation for his father's services in the revolutionary war, beg leave to report:

That the petitioner is already too old to receive a pension for his father's services, were his case clearly shown to be a meritorious one. He has, however, offered no proofs or certificates to support his allegations, therefore your committee submit the following resolution:

Resolved, That the petition of John R. Tucker be denied.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 213.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Alexander Wilson, for increase of pension, and for back pension, beg leave to report:

That at the 29th Congress the petition of same Alexander Wilson was referred to them, and, after mature consideration, the following report was submitted:

"The Committee on Pensions, to whom was referred the petition of Alexander Wilson, report, July 6, 1846:

"It appears that the petitioner lost his right arm by the explosion of a musket, while he was in the performance of his duty as a soldier in the United States army, and that he received a pension in consequence of said wound; but he now asks an increase of his pension. As he already receives eight dollars per month, which is the highest pension allowed by law to a private soldier on account of wounds or other injuries, the committee recommend the adoption of the following resolution:

"*Resolved*, That the prayer of the petition be not granted."

Adopted the above report in the case under consideration, and having evidence from the Commissioner of Pensions that the pension of the petitioner now dates from the day following his discharge from service, your committee submit the following resolution:

Resolved, That the prayer of the petitioner be denied.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 214.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Mrs. Sally Keyes, widow of Ephraim Keyes, a soldier of the revolution, praying a pension, beg to report:

That the petitioner prays for a pension for six months' service of her alleged husband, Ephraim Keys, as a private in the United States army during the revolution. His service, however, by certificate, is shown to have been five months and twenty-seven days. Petitioner offers no positive evidence that the said Ephraim Keyes was her husband, although there is a certificate of marriage between E. Keyes and Sally Gerry, said to be the same person as the petitioner. The law, however, recognizing no period of service less than six months as entitling to a pension, the committee recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be denied.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 215.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the memorial of Hannah Walker, widow of Francis Walker, a soldier of the revolution, praying to be allowed a pension and arrears of pension, beg leave to report:

That the petitioner prays a pension and arrears of pension on account of alleged services of her husband, Francis Walker, who was drafted into the service of the United States in the war of the revolution, but she offers no evidence of those services, except the affidavit of said Francis Walker, and by her own statement can bring no other proof. This evidence, unsupported by other proof, being thought insufficient to establish her claim, therefore the committee submit the following resolution:

Resolved, That the prayer of the petitioner be denied.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 216.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions to whom was referred the petition of James Connelly, praying arrearages of pension, beg leave to report:

That the pension now received by petitioner dates from the time of completing his testimony, and that there is no law entitling any person to a pension before the completion of the evidence to establish their claims, therefore, the committee submit the following resolution:

Resolved, That the prayer of petitioner be denied.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 217.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 371.]

JUNE 27, 1856.—Received from the Court of Claims and referred to the Committee of Claims.
JULY 11, 1856.—Reported by Mr. Brodhead and ordered to be printed.

GEORGE A. MAGRUDER *vs.* THE UNITED STATES.

Opinion of the court delivered by GILCHRIST, C. J.

On the 10th of December last an opinion was delivered in this case, that the claimant was entitled to relief. Since that time we have been favored with the views of the Fourth Auditor of the Treasury upon the question. His letter of the 3d of January, containing a statement of certain facts and an argument addressed to the Secretary of the Treasury, has been forwarded to this court. We have reviewed our decision and re-examined the case by the light thrown upon it by this letter.

The first section of the act of March 3, 1835, (4 Stat., 756,) provides, that "officers temporarily performing the duties belonging to those of a higher grade shall receive the compensation allowed to such higher grade while actually so employed."

By the plain and obvious meaning and words of this act, if an officer temporarily performs the duties belonging to a higher grade, he is entitled to increased compensation. But the act, like all other laws, must receive a reasonable construction. Its meaning is a question of law, and it is to be construed by the same rules, and the same mode is to be adopted in order to ascertain its intent, which are applicable, and which is adopted, in the case of any other statute. It would be unreasonable to hold that an officer might perform the duties of a higher grade "of his own accord, or under incompetent authority, and then claim the benefit of the act;" or that "if a passed midshipman should chance to have volunteered to perform the duties of an indolent lieutenant; or if a lieutenant should, from politeness to the captain, have relieved him from his duties," these officers might respectively claim an increased compensation. Such consequences do not follow from a reasonable construction of the act, although that seems to be apprehended by the Auditor in his argument. If an officer actually performs the duty belonging to a higher grade, he is entitled, *prima facie*, to the benefit of the act. If any evidence exists which shows that, although he actually did the duty, he performed it under such circumstances as would render it unreasonable and contrary to the true meaning of the act that he should receive additional compensation, then it should not be paid. The cases supposed by the Auditor would probably be of this character.

It appears from the Auditor's letter, that a few days after the enactment of the law of 1835, "the accounting officers made and published

a regulation requiring, as evidence in support of claims to extraordinary pay for having performed the duties of a superior grade, a written acting appointment from the Secretary of the Navy, or if such service should be called for while the vessel should be at sea, then such written appointment from the commanding officer of a squadron or vessel on separate service; and pursers were directed to enter and pay officers so appointed in their acting rank from the acceptance of the appointment and commencement of service under it. The written acting appointment as proof of authority, and the entry upon the rolls as proof of service, constituted the requisite evidence. On the 23d of March, 1838, the Secretary of the Navy addressed a letter to this office, directing that a greater number of officers on board of a vessel-of-war than the complement of such vessel should not be paid, the complement of each class of vessels having been previously fixed by the President of the United States. On the 24th of the same month, the accounting officers issued another circular, containing the following regulation in reference to the performance of duties belonging to a superior grade: 'To authorise payments to acting officers (as such) there must be an acting appointment in due form, corroborated by an entry on the pay and muster rolls, and also a certificate to be filed with the accounts from the commanding officer, stating that the officer acting has actually performed the duties of the higher grade (naming it) for the time claimed, and that there was not more than a complement of that grade on board, including the acting officer, during the time he was acting.' "

Now the substantial effect of the act of Congress and the regulation of the "accounting officers," is as follows: The act of Congress provides that if an officer shall temporarily perform the duties of a higher grade, he shall receive the increased compensation. It prescribes no particular mode of proof. Consequently, under the act, any legal evidence is admissible. But the regulation provides that the officer shall *not* be paid unless he produces a *written* appointment. It prescribes a condition not required by the act of Congres. The statute admits any legal evidence, while the regulation excludes it. Now it seems not to have occurred to the Navy Department, or to the "accounting officers," to inquire into the extent of their authority, and to ascertain whether they had the power of legislation to an extent which would authorize them to superadd a condition not required by the act of Congress. It is Congress that is supreme in such matters, and not an executive department, and departmental regulations must be made in subordination to the law of Congress. It is the duty of the departments to administer the law, but it is the constitutional privilege of Congress to enact it. The departments stand, in relation to this matter, upon the same ground with this court and with the judiciary in general. It is their duty, as it is our duty, to administer the law, and not to make it. The theory of our government requires that the legislative, the judicial, and the executive departments should be kept distinct from each other. We, like the executive departments, are to administer the law, regardless of the consequences. If an improvident or ill-advised law is passed, neither we nor they have any right to repeal it; nor, whatever may be our private opinions as to its

expediency, have we any right to place any obstacles in the way of its full and perfect execution. This is the only safety of the republic, that the law, and that alone, shall be executed according to its simple and obvious meaning. We are aware of the difficult position of, and the responsibilities thrown upon, the executive officers. They are the necessary incidents to their position, and their duties are certainly no greater nor more responsible than those of the judiciary. But we have no right, when an act of Congress admits evidence of a certain kind, to decide that we will not render a judgment for a claimant unless he produces evidence of a different kind. We have no power to repeal or modify an act of Congress by a rule of this court; nor can it be done by a regulation of an executive department. We may adopt rules of practice, and the departments may make regulations, but we must each be careful that they are in strict subordination to the law. Wherever there is any antagonism between them, the rules of practice and the regulations must yield, and the law of Congress must govern. But whether the regulation might or might not, under some circumstances, have the force of a law, the practice of the accounting officers is not to regard it as possessing such a validity. It is suspended in its application to individual cases as the accounting officers think proper. It was suspended in the present case. The Fourth Auditor says, "as it appeared, however, that Commodore Read had been absent from the ship for five or six months on business of the government, the rules were so far relaxed as to allow Mr. Magruder the difference of pay he asked for at that period." But the claimant had no written acting appointment. If the regulation was a rule of law, and to be followed as such, the whole claim should have been rejected. That it is not regarded as a rule of law, however, appears from the fact that it is applied or relaxed according to the discretion of the accounting officers for the time being. It needs no argument to show that a regulation, which the accounting officers may regard or not as they think proper, cannot be considered as having the force of law. All that can be said of it is, that the accounting officers enforce it or disregard it, according to circumstances. We may apply to this regulation the remarks made by the Supreme Court in the case of The United States *vs.* Dickson, 15 Peters, 161. It is there said, "the construction so given by the Treasury Department to any law affecting its arrangement and concerns is certainly entitled to great respect. Still, however, if it is not in conformity to the true intendment and provisions of the law, it cannot be permitted to conclude the judgment of a court of justice. The construction given to the laws by any department of the executive government is necessarily *ex parte*, without the benefit of an opposing argument in a suit where the very matter is in controversy, and when the construction is once given, there is no opportunity to question or revise it by those who are most interested in it as officers. * * * It is not to be forgotten that ours is a government of laws and not of men." It cannot surely be asked of the judiciary to give to an executive regulation more binding force than is given to it by the department by which it was made, or to consider it as imperative when it is not so regarded by the department.

The evidence shows that the claimant actually performed the duties of captain of the Columbia, *from the* 18th of April, 1838, to the

28th of June, 1840. The certificate of Commodore Read is as follows:

"I certify that Lieutenant George Magruder was senior lieutenant on board the frigate Columbia, from the 18th April, 1838, to the 28th June, 1840, during which time I commanded the United States naval force in the East Indies; and I further certify that Lieutenant Magruder stood to me in the relation of captain of the Columbia, and actually performed the duties of captain during the period set forth above.

"GEORGE C. READ.

"PHILADELPHIA, *February* 3, 1855."

It is admitted that this certificate is genuine, and the Committee on Naval Affairs in the House regard it as "conclusive as to the capacity in which the petitioner performed duty." The argument of the Fourth Auditor is, that Commodore Read has stated, "not that Mr. Magruder had actually discharged the duties of captain, but that he had stood in the relation of a captain to him." If this be the certificate to which the Auditor alludes, Commodore Read states that the claimant "actually performed the duties of captain." But even if he had not so stated in terms, no other construction could be given to the certificate. If it is said that an individual "stands in the relation of chief justice of the Supreme Court," is any other idea conveyed than that he is chief justice? Such is the obvious and simple meaning of the language.

The act of March 3, 1835, was modified by the 12th section of the act of August 26, 1842, (5 Stat., 536,) which provided that no allowance should be made for performing the duties of a higher grade, unless the officer had been offered to perform it by the Secretary of the Navy, or the commander of a fleet or squadron, or ship acting simply on foreign service. The effect of this act is merely to require that the order shall have been previously given. It implies that the order need not have been given by the former act, otherwise, why was the act passed, unless to remedy what was considered as a defect? Nothing is said in it about a written appointment; if Congress had thought that a written appointment was necessary they would have said so. As they said nothing on the point, while legislating upon the subject, it is to be presumed that they did not consider it important.

We see nothing in the case that calls on the claimant to do anything more than to make out his claim by the ordinary rules of evidence. That he has done and has proved, we think that he is entitled to relief; and we report a bill accordingly.

AN ACT for the relief of George A. Magruder.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the Treasury not otherwise appropriated, to pay to George A. Magruder, a commander in the navy, the sum of three thousand eight hundred and thirty dollars and twelve cents, being the sum now due to him by law for his services as captain of the frigate Columbia, from the eighteenth day of April, 1838, to the 28th day of June, 1840.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 218.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 372.]

JUNE 27, 1856.—Received from the Court of Claims and referred to the Committee of Claims.
JULY 11, 1856.—Reported by Mr. BRODHEAD and ordered to be printed.

JOSEPH WHITE *vs.* THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

This claim is referred to us by the House of Representatives.

The case is stated as follows:

From April, 1845, to June, 1849, the claimant was navy agent for the port of Baltimore and acting purser for the naval school at Annapolis, in both of which offices he received and disbursed the public money, which he received from the treasury as navy agent, and rendered separate accounts for the money received by him in each of the offices. He charged himself, as acting purser, with the sum of $561 10, as received from himself as navy agent, but did not give himself a corresponding credit in his account as navy agent. He had quarterly accounts with the departments from that time until June, 1849, but was not informed of, and was not aware of, the error. In his accounts up to June, 1819, certain sums having been disallowed him, the Treasury Department caused a suit to be instituted against him, and upon the trial more than $5,000, which had been disallowed, was allowed him under the instructions of the court. On the trial he was first made aware of the mistake in the sum of $561 10, which he was not allowed as a set-off, because he had omitted to claim it at the Treasury Department, and at the suggestion of the court he withdrew this item, and it was not passed upon as being involved in the case.

Prior to the 22d of November, 1854, he applied to the Treasury Department for the payment of this sum, but was informed by the Fourth Auditor, Mr. Dayton, that the accounting officers were of opinion that, as a suit was brought against him in which all his accounts were judicially investigated, it would not be proper for them to reopen the accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury upon the trial.

He asks payment of this sum, with interest thereon from the 9th of January, 1852.

The case is submitted upon the evidence transmitted to us by the House of Representatives.

In Mr. Dayton's letter of February 15, 1855, he states as follows: "Upon the settlement, however, at this office of his account as acting purser, the credit which he had omitted to claim was allowed him as

navy agent, and was entered on the reconciling statement as one of the differences between his account as stated by himself and the same account as stated at this office. This item having remained on the reconcilement for three years, without being claimed by Mr. White, was omitted on the last settlement of his account, which took place after he had ceased to be in office. A suit having been instituted against him for the balance which was found to be due from him, he still neglected to present a claim to this sum of $561 10, and judgment was given against him without any reference to it. In the month of November last, the claim was made for the first time at this office, and Mr. White was informed that as a suit had been instituted by the United States against him, in which all his accounts, both as navy agent and acting purser, had been judicially investigated and decided upon, it would not be proper, in the opinion of the accounting officers, to reopen those accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury upon the trial." The reason given by the letter for declining to allow this sum, appears to be that the account could not be reopened "for the purpose of admitting a claim alleged to have been inadvertently omitted to be presented before the court and jury upon the trial." But it does not appear to have been inadvertently omitted to be presented. It was discovered upon the trial by the claimant's counsel, although it was known to the department at the time it occurred, but the claimant was not informed of it. It was not pressed by his counsel, but at the instance of the court was reserved for future examination by the accounting officers. Such is the statement of W. P. Whyte, esq., one of the counsel. It is stated in the opinion of the circuit court in Maryland: "It is unnecessary to notice the remaining item of the defence, as it has been properly withdrawn by the defendant. And as the alleged error in omitting to credit himself in his navy agent's account with the sum of $561 10, which he transferred to his debit in his purser's account, does not appear on the face of the account, and as this credit was not presented and rejected, it is not open to investigation here. If the error exists, it may be discovered by an examination of the accounts at Washington, and without doubt would be readily corrected by the accounting officers." It thus appears that the claim was presented, and was withdrawn for the reasons stated. The refusal to allow the sum was probably owing to the fact that the accounting officers were not precisely informed of what took place on the trial. There is nothing in the case to show why the item was dropped from the reconcilement, and why it was not admitted by the United States on the trial. If it was properly placed upon the reconcilement, it should have been allowed him without hesitation when his accounts were subjected to a judicial investigation.

The evidence establishes the facts that the claimant should have been credited with the sum of $561 10, and that this item was not passed upon at the trial. The ordinary principles of law and morality which are applied to regulate the dealings of individuals are applicable in transactions between the United States and their citizens. Between private persons such a state of facts would induce a jury at

once to return a verdict for the plaintiff. We are of opinion that the claimant is entitled to recover this sum of $561 10. But he is not entitled to interest by law, although he has the strongest equitable claim to it from the 9th day of January, 1852. He has proved that the United States owed him that sum, but, according to our decision in the case of Todd *vs.* The United States, interest is not a legal incident to a debt due from the United States, where it is merely proved that a debt is due. We shall adhere to that decision, until there is some action by Congress which would authorize or require us to depart from it.

We report a bill to carry the decision in this case into effect.

A BILL for the relief of Joseph White.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to Joseph White the sum of five hundred and sixty-one dollars and ten cents, being for the amount of money by mistake omitted to be credited to him as navy agent, in settling his accounts at the treasury.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 219.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 373.]

APRIL 2, 1856.—Received from the Court of Claims and referred to the Committe of Claims.
JULY 11, 1856.—Reported by Mr. BRODHEAD and ordered to be printed.

JA MIS M. LINDSAY vs. THE UNITED STATES.

The opinion of the court was delivered by Chief Justice Gilchrist.

The prayer of the claimant in this case is, that Congress will pass a bill confirming his title to certain lands. The case comes before us by virtue of a resolution of the House of Representatives, and is submitted on the evidence referred to us.

The claimant alleges that, by the first article of the treaty of August 9, 1814, between the United States and the hostile Creek Indians, Samuel and David Hale, chiefs of the tribe, obtained a cession of land know as fractional section 21, township 6, range 5, west of Alabama river; that they occupied the land until the year 1826, when they sold it for a valuable consideration to one Adam Carson, assigning as a title their certificate of reservation; that in the year 1840 the land was levied upon as the property of Carson, and sold under a judgment rendered in Alabama by the sheriff of the county to the Hon. Lyman Gibbons, excepting one hundred acres on the south side of the location; that Gibbons sold it to Henry Center, who died in the undisputed possession of it; that Edward Center, his devisee and executor, conveyed it to the claimant, and that neither the possession nor the title of the various grantees has been questioned by any one. He presented his petition to Congress, and the Committee on Private Land Claims in the House made a favorable report thereon, accompanied by a bill for his relief, which was not acted on, and the case is submitted to us on the evidence laid before Congress.

The petition to Congress recites the above facts, and states, also, that when Carson purchased the land of the Hales, he supposed that he purchased a good and perfect title in fee, and that they supposed they had a right to sell and convey a perfect title; that he paid a valuable consideration for the land, and that the transaction was fair and *bona fide*; that Carson, after occupying the land for two years, removed to Mississippi, where he died, and that, after diligent search, he has been unable to obtain the original certificates granted to the Hales, and transferred to Carson; that all the subsequent purchasers took the title, believing it to be perfect and undoubted, and in every instance paid the full value of the land; that the petitioner purchased under the belief that his title was derived from the United States, and that he was not aware that they had, or could have, any claim to the

land, and that he paid the full value of the land, believing that the title was undoubted. He states also that he is informed that the courts of the country have decided that when an Indian reservee sells and conveys away the lands ceded to him it is an abandonment by the reservee, and the title reverts, *ipso facto*, to the United States; of these decisions he says he was unaware at the time he made the purchase, and has every reason to believe that all the purchasers were equally unaware of them.

In relation to the sale by the Hales to Carson, Andrew Ormon testifices that about the year 1826 they sold the land to Carson; that the purchase was made for the consideration of one thousand dollars, which sum was then a full and fair price for the land; that the money was honestly paid by Carson, and the transaction was, in all respects, *bona fide*—the venders believing that they had a right to sell and make a good title, and the vendee believing that he purchased a good title to the land; and that, after the sale, and after the money was paid, all the parties were entirely satisfied with it. To the same effect are the depositions of Isaac Thompson and James Daniel; and Daniel also says that the land was offered to him at the same price, but he declined purchasing it.

The claimant also introduces an office copy of a deed from Robert B. Parker, sheriff of Clarke county, Alabama, dated on the 6th day of July, 1840, conveying the premises in question to Lyman Gibbons, in consideration of $3,200, by virtue of a sale on a write of *fieri facias* issued upon a judgment recovered by Archibald Brown against Carson.

Also, an office copy of a deed from Gibbons to Henry Centre, dated on the 5th of June, 1841, releasing all the interest of Gibbons in the premises.

Also, an office copy of a deed releasing all the interest of Edward C. Center and his wife to the claimant, and dated on the 1st day of October, 1850.

The claimant proved by the affidavit of P. Phillips, esq., admitted as evidence by the assent of the solicitor, that Henry Center died previous to October, 1850, and introduced an attested copy of his will, dated on the 12th of March, 1835, constituting Edward Center his sole executor. Also, an authenticated copy of a certificate from the Commississioner of the General Land Office, dated on the 12th April, 1820, stating that the Hales had the right to occupy the land in question.

This first article of the treaty of August 9, 1814, (Stat. at Large, 120,) between the United States and the Creeks, cedes certain lands belonging to the Creeks to the United States. It also provides "that where any possession of any chief or warrior of the Creek nation who shall have been friendly to the United States during the war, and taken an active part therein, shall be within the territory ceded by these articles to the United States, every such person shall be entitled to a reservation of land within the said territory of one mile square, to include his improvements as near the centre thereof as may be, which shall enure to the said chief or warrior and his decendants as long as he or they shall continue to occupy the same, who shall be protected by and subject to the laws of the United States; but upon *he voluntary* abandonment thereof by such possessor or his descend-

ants, the right of occupancy or possession of said lands shall devolve to the United States, and be identified with the right of property ceded hereby."

If the contingent interest of the United States depended merely upon the construction of the words "voluntary abandonment," it might, perhaps, be a proper subject of inquiry whether the sale of the right of the reservee, *bona fide* and for a valuable consideration, would be such a voluntary abandonment as is contemplated by the treaty, in order that the right of the reservee should devolve to the United States. But the evident intention of the treaty is not to give to the reservee an estate in fee simple in the land, but merely a right of occupancy, as the reservee and his descendants are entitled to the land only "so long as he or they shall continue to occupy the same." The first section of the act of March 3, 1817, (3 Stat. at Large, 380,) designates the manner in which the chiefs and warriors of the Creek nation who are entitled to a reservation shall locate their reservations, and then provides "that the lands so selected shall enure to such chief or warrior so long only as he shall continue to occupy and cultivate the same, and, in case he shall not have abandoned the possession, shall, on his decease, descend to and vest in his heirs in fee simple, reserving to the widow of such chief or warrior the use and occupation of one-third part of said lands during her natural life." This act, which appears to have been intended as declaratory of the meaning of the treaty, states with distinctness the interest which the reservees have in the land.

We cannot adjudge, in this state of things, that the petitioner has any legal cause of action against the United States, and that they are bound to release to him their interest in the lands in question. The case does not present a claim founded upon any law of Congress, or any regulation of an executive department, or upon any contract, express or implied, with the government of the United States. It comes before us by a resolution of the House. Our construction of the act constituting the court is, that we have no authority to determine that a party has a legal claim against the United States, unless it comes within one of the classes specified, or is founded on some legal right. We are authorized to examine any case referred to us by either House of Congress, to report our opinion upon the law, and to state the facts as we find them to be proved; but in relation to matters which address themselves particularly to the sound discretion and liberality of Congress, we do not feel ourselves authorized to recommend any legislation. In such cases the intelligence and sense of equity and right in Congress do not require any aid from us.

In the present case, our opinion as to the law is, that the claimant has no legal cause of action against the United States, and that they are not bound to convey to him their interest in the lands in question.

As to the facts, we find that the sale by the original reservees to Carson was made without fraud, in good faith, and for a valuable consideration; and such was, also, the case with the subsequent conveyances, including that to the petitioner.

There are some considerations of an equitable character which may properly be considered by Congress. The reservation was intended

for the benefit of the Indians. They received, and Carson and the subsequent grantees paid, not merely the value of the life estate of the reservees, but the value of the fee simple of the land. The reservees considered it more for their interest to sell the lands than to occupy them. They might have retained the possession during their lives, in which event the fee would have descended to their heirs. It can make no difference to the United States whether the fee is in the heirs of the reservees or in the petitioner; and there would seem to be no necessity that, in a matter so important to the petitioner, and so unimportant to the United States, they should avail themselves of what is a strict legal right. If, in consequence of the sale of the lands, the position of the United States had been in any way affected for the worse, the case would present a different aspect. But the effect of the sale is to give the United States a legal right to the land which they had not before the sale; and it is for Congress to say whether, under the circumstances, they will take advantage of such right.

It may be added that on the 23d of February, 1855, the Committee on Private Land Claims in the House made a report in favor of the petitioner, accompanied by a bill for his relief. At this late period of the session the bill was not acted upon, but the case was referred to this court. There is a precedent for such action as the petitioner asks to be found in the act of February 19, 1849.—(9 Stat. at Large, 346, 762.) This act relinquishes to Stephen Steele and James Daniel the reversionary interest of the United States in a certain Indian reservation in the State of Alabama, provided they have fairly in good faith, and for a valuable and adequate consideration, and by authentic and valid deeds, purchased the land; all which conditions we find have been complied with in the present case.

If the omissions in the evidence shall be supplied which we have referred to, we shall submit to Congress a bill for the relief of the petitioner, for such action as may be deemed proper.

There are also precedents to be found in an act in favor of occupants under the treaty of Fort Jackson, (6 Stat. at Large, 323;) acts in favor of Samuel Brashears and of William Hollinger, (6 Stat. at Large, 342.) Also the act of 29th May, 1830, (6 Stat. at Large, 441;) act of 14th July, 1832, (6 Stat. at Large, 519,) and the act of 15th June, 1844, (6 Stat. at Large, 916.)

We submit, herewith, a bill to Congress for the relief of the petitioner, for such action as may be deemed proper.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 220.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 374.]

JUNE 27, 1856.—Received from the Court of Claims, and referred to the Committee of Claims.
JULY 11, 1856.—Reported by Mr. Brodhead, and ordered to be printed.

MOSES NOBLE vs. THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

This is a claim for fishing bounties, amounting to the sum of $1,704 08 upon seven vessels employed in the fisheries in the year 1852.

The petition states the names, the owners, and the tonnage of the vessels, and the date of the commencement and termination of the voyage of each of them; that the claimant, who was the agent and manager of the vessels before the commencement of the fishing season of 1852, engaged masters for each of the vessels for the fishing season, for the purpose of carrying on the bank and other cod fisheries; and caused the masters, before proceeding on the voyage, to make an agreement with every fisherman, in accordance with the provisions of the first section of "An act for the government of persons in certain fisheries," approved June 19, 1813, (3 Stat., 2,) and to conform in all particulars with the requirements of said act; and that he then, as the agent of the owners, signed an instrument which was supposed to contain said agreement, and that the vessels all engaged for more than four months, excepting the brig Good Hope, which engaged for three and a half months in the bank and other cod fisheries; and in all respects conformed to the requirements of the act above named, and with the requirements of the act laying a duty on imported salt, granting a bounty on pickled fish exported, and an allowance to certain vessels employed in the fisheries, approved July 29, 1813, (3 Stat., 49.)

The first section of the act of June 19, 1813, enacts that the master of any vessel to be employed in the bank and other cod fisheries shall, before proceeding on such fishing voyage, make an agreement in writing or print with every fisherman who may be employed therein, and shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season; and shall also express that the fish, or the proceeds of such fishing voyage which may appertain to such fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught.

The 8th section of the act of July 29, 1813, (3 Stat., 52,) provides, "that no ship or vessel of twenty tons or upwards, employed as afore-

said, shall be entitled to the allowance granted by this act, unless the skipper or master thereof shall, before he proceeds on any fishing voyage, make an agreement in writing or in print with every fisherman employed therein, according to the provisions of the act entitled "An act for the government of persons in certain fisheries."

The 5th and 6th sections of the act of June, 1813, thus referred to, provide for a tonnage allowance to be made to the owners of fishing vessels, but require that the vessels shall have been employed at sea four months at least of the fishing season. The act of March 3, 1819, (3 Stat., 520,) enacts that an allowance shall be paid to fishing vessels employed in the bank and other cod fisheries, for the term of three and a half months at least of the fishing season. It has been held, in relation to these acts, that they include within their terms all vessels engaged in the cod fisheries, without limitation or specification as to the length of their fares, or the nature of their fisheries.—(The Schooner Harriet, 1 Story's C. C. R., 251.) The sums here claimed are on account of the tonnage allowance which, by the 5th section of the act of July, 1813, is the sum of four dollars for each ton over thirty, in case the vessel is actually employed at sea for four months, and the burden of each exceeded thirty tons. The act of March 3, 1819, (3 Stat., 520,) gives an allowance of three dollars and fifty cents per ton to vessels of such burden, which have been employed at sea for three and a half months. All these vessels were employed at sea for four months, with the exception of the Good Hope, which was employed at sea over three and a half months, and became entitled to an allowance of $360, the act of March, 1819, providing that no allowance shall exceed that sum.

It is contended by the solicitor that, besides the tonnage and the names of the vessels, the names of the owner, the agreement made with the fishermen, and the year and season in which the voyages were made, it ought to be stated in the petition when, that is, between what dates, the vessels were engaged; that they were occupied exclusively in taking codfish at sea; that the master and three-fourths of the crew were citizens of the United States; that the vessels were inspected by the proper officer of the customs, naming him; and that he certified to the sufficiency of their outfit according to law; that a regular log-book was kept containing the entries from day to day; that the log-book was duly presented to the collector; and that the owners or agents of the vessels presented also the certificates required of them.

It is sufficient to say of this position, that the claim is founded upon certain laws of Congress, and those are stated in the petition. The other points to which the solicitor refers are all matters of proof; and attached to the deposition of Joseph M. Edmonds, the deputy collector of Portsmouth, New Hampshire, are official copies of certificates signed by Nathaniel R. Folsom, the inspector, that each of the vessels was seaworthy; that they were found in everything suitable for the cod fisheries; that the crews were sufficient for the tonnage; that the master and three-fourths of the crew were citizens of the United States; and that in all respects each vessel was fitted for the cod fisheries, agreeably to the provisions of law, and that the agree-

ment between the master and fishermen was duly executed by them, and the owner or his agent. Edmonds deposes, that each of the vessels was examined by an officer detailed for the purpose; that they were found to be properly fitted for cod fishing, according to law and the regulations of the Treasury Department; and that certificates were given, copies of which have been above mentioned. Annexed to his deposition, also, are the original statements of Moses Noble, agent for each of the vessels, of the time of sailing and returning from sea of each vessel, and his affidavit, proving the instrument executed by the fishermen, authenticated by the custom-house seal, and sworn to before the deputy collector of Portsmouth.

An objection was made by the collector to the payment of these bounties, because no log-book was produced before him, as required by the regulations of the Treasury Department. To show that it was competent for the department to require the production of a log-book as a condition precedent to the payment of the bounties, the United States rely on the case of the United States *vs.* Baily, (9 Peters, 251.) In that case the defendant was indicted for false swearing under the third section of the act of March 1, 1823, ch. 165, which provides for the punishment of any person who shall swear falsely touching the expenditure of public money, or in support of any claim against the United States. The indictment was for swearing falsely in an affidavit, in support of such a claim, under the act of July 5, 1832, for liquidating and paying certain claims of the State of Virginia. The 3d section directed the Secretary of the Treasury to adjust and settle certain claims for half-pay under that act. It is said by the court: "It is a general principle of law, in the construction of all powers of this sort, that where the end is required, the appropriate means are given. It is the duty of the Secretary to adjust and settle these claims, and in order to do so, he must have authority to require suitable vouchers and evidence of the facts which are to establish the claim." Upon this ground it was held that the Secretary was authorized to require an affidavit in support of the claim. It is to be observed that the act of Congress did not prescribe the character of the proof, nor upon what evidence the Secretary should adjust and settle the claim. It was consequently his duty to adopt the appropriate means, and to prescribe the necessary regulations. He might require legal evidence, by which is ordinarily understood evidence under oath. The decision, therefore, does not apply to a case where the proof has been already pointed out by an act of Congress.

The case of the schooner Harriet, (1 Story C. C. R., 252,) which has been referred to, was a libel of seizure for an alleged forfeiture, charging that the owners of the vessel did, by fraud and deceit, obtain the allowance provided for vessels employed in the fisheries, contrary to the act of 1823, ch. 34. It appears from the opinion of the court, that in order to prove that the vessel was absent at sea for the period of four months, a certificate, purporting to be such a certificate as is required by the 7th section of the act of 1813, ch. 34, was produced and sworn to, and on this certificate the allowance was paid. The certificate stated the particular times of the sailing and return of the Harriet on her different fares, amounting in all to one hundred and

thirty-one days. There was, however, an error in the calculation, apparent on the face of the paper, of ten days, so that the whole period of her absence was only 121 days. The court, therefore, held that it was manifest that she was not entitled to the allowance on the very face of the certificate, and it was further held that it was fraudulent. To show the manner and the circumstances under which the certificate was made, a witness was introduced, and an almanac, purporting to be the almanac in which the original days of the sailing and return of the Harriet were marked, partly in pencil marks of R. (return) and S. (sailing,) and dots in ink against certain days in the almanac, as being the very days of S. (sailing) and R. (return.) It was held that this was not in any just sense a journal.

It is said by the court (p. 260) "the true duty of the owner and skipper of these boats and vessels is to keep an exact journal or memorandum of the actual times of being at sea, whether whole days or parts of days, and thus to enable the collector, or other officers of the customs, to ascertain with entire exactness the time passed at sea." This is undoubtedly true, as a matter of convenience, particularly where numerous fares or trips are made in the course of the fishing season. But the remark is not made for the purpose of stating that keeping a journal is necessary in order to entitle the party to the bounty; but it is made for the purpose of contrasting it with the almanac offered in evidence, of which the court say: "The mere marking or mere dotting of an almanac, which might be exchanged or altered at pleasure, would be, and could be no just or sufficient proof of the verity of the marks or dots therein, as expressing the true times. If any document of this sort is to have weight as an original journal or memorandum to repel suspicion or to establish verity, it must be some document which, in its nature or character, like a log-book kept at sea, should contain original entries made from day to day, and be beyond question a document not made up for a particular purpose afterwards upon general recollections and suggestions of the parties in interest. What I desire to say is, that for the reasons already suggested, the almanac already produced as a memorandum of the times of the sailing and of the return of the Harriet, on her several voyages or fares, is not a satisfactory document to relieve the case from any otherwise well-founded suspicions of bad faith, or fraud, or deceit." Throughout the case no allusion is made to any regulation of the Treasury Department requiring the production of a log-book. Now, when an act of Congress makes it the duty of the Secretary of the Treasury to adjust and settle certain claims, and points out no mode of proving them, as in the case of the United States *vs.* Bailey, before referred to, it may well be that he is to prescribe such rules and modes of legal proof as appear to him to be judicious. But where an act of Congress provides that a sum of money shall be paid upon the production of certain proof, the Secretary cannot superadd to this further proof not required by the act. This would be to give him the power of legislation, and that, too, upon a subject on which Congress had already legislated. If he possessess this power, so do all the other *departments,* and so does the judiciary; for it would be equally competent for them to say that they would not consider a claim as valid,

unless evidence were produced not required by the act. The 7th section of the act of July 29, 1819, (3 Stat., 52,) enacts, that before the owner of a vessel receives the allowance mentioned in the act, he shall produce to the collector a certificate mentioning the days on which the vessel sailed and returned on her different voyages, and shall make oath to its truth, and certificates in accordance with this provision are among the papers in the case. The inference is irresistible, that upon the production of the certificate the owner is entitled to the allowance; and it is equally clear, that in the opinion of the court in the case of the schooner Harriet, if there had been no fraud in the certificate, nothing further would have been required.

Even if it should be supposed that the production of the log-books should be necessary before the party could be entitled to the allowance, it is a question whether their absence is not sufficiently accounted for. The log-books of three of the vessels—the Sardine, the Good Hope, and the Delta—are produced and attached to the deposition of Moses Noble. The non-production of the log-books of the remaining four vessels is accounted for by Noble as follows: "In two of said four vessels log-books were kept; in a third the master kept a log-book in an almanac; the master of the fourth vessel could not write, and kept no log-book. The claims for bounties being suspended at the Treasury Department for said alleged informalities in the shipping articles, I paid no attention to the log-books of the four vessels last named, and those which were kept have become lost, and I am unable to find them. One of said masters has moved out of the State, and the present residence of another of them is unknown to me." Now there is no reason why a log-book may not be kept in an almanac, if the times of sailing be denoted with sufficient certainty, so as not to be liable to the objections stated in the case of the schooner Harriet. Nor can we suppose that the misfortune of a master in being unable to write would be punished by his being deprived of the bounty given for the encouragement of the fisheries and seamen, if any reliable evidence could be procured of the times of sailing and returning from other sources.

But the absence of the log-books was not relied upon by the department, and we do not think their production was necessary for the reasons above stated. It is unnecessary, therefore, to determine whether their absence is sufficiently accounted for. The important question presented by the case is that which arises about the construction of the instrument containing the agreement with the fishermen. The claimant, after the decision of the collector in relation to the log-books, appealed to the Secretary of the Treasury, who, not considering the question as to the log-books a material one, decided that the agreement was defective.

The first section of the act of June 19, 1813, enacts, that the master of any fishing vessel shall make an agreement with every fisherman, and shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season, and shall also express that the fish, or the proceeds of such fishing voyage which may appertain to the fishermen, shall be divided among them in proportion to the quantities *or number of said fish* which they may respectively have

caught. The seventh section of the act of July 29, 1819, enacts that the owner, previous to receiving the allowance made by the act, shall produce the agreement to the collector, and also a certificate mentioning the days on which the vessel sailed and returned on the several voyages or fares she may have made. The eighth section enacts that the vessel shall not be entitled to the allowance made by the act, unless the master shall make an agreement with each fisherman, according to the act of June 19, 1813. This, it may be remarked, is the only condition precedent in terms required by the act of Congress. This last mentioned act requires that the agreement shall express whether it "is to continue for one voyage or for the fishing season." The agreement embodied in the petition states that the vessel is "to be employed on a fishing voyage or voyages, to commence on the ——, and to end on the ——, 184–." This seems to be a literal compliance with the act. By this act, also, the agreement is to "express that the fish, or the proceeds of such fishing voyage or voyages which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught." The agreement produced is expressed to be "in consideration of one half of the number of fish and oil, or proceeds of said voyage or voyages, after the shoreman's share is deducted, in proportion to the quantity or number of fish respectively caught and oil made." By this agreement the quantity, which, in the words of the act, "may appertain to the fishermen," is one half the proceeds of the voyage, and the question made is whether this quantity is, by the language of the agreement, to be divided among the master and fishermen in the proportion mentioned in the act. The words, "to be divided among us," or words of that import, are omitted; but the agreement is to be so construed that it shall have a meaning, if possible, and that every part shall have its effect. Unless the words referred to are understood, all that follows in relation to the "proportion" is entirely without meaning. Moreover, the agreement expressly provides that one half the proceeds of the voyage shall belong to the fishermen, in proportion to the quantity of fish respectively caught. Now, if they were entitled to the proceeds in this proportion, of course the proceeds were to be divided among them in such proportion. We do not think that any further comment on the subject can make the matter more clear than this statement of it.

Our opinion is that the objection, that the agreement does not show by whom the fish were to be caught, is untenable. No other inference can be made from the agreement than that the fish to be divided among the fishermen were to be the fish caught by them. It certainly did not refer to other fish caught by other persons not parties to the agreement.

It is not necessary to inquire into the question of licenses to these vessels, as the solicitor admits they were licensed and waives any question on the point. We find the facts proved necessary to entitle the claimant to the allowances prayed for, and we report a bill for his relief accordingly.

AN ACT for the relief of Moses Noble.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be directed, out of any money in the treasury not otherwise appropriated, to pay to Moses Noble, agent for the brig Good Hope, and the schooners Delta, Jasper, Sardine, Five Sisters, Commonwealth, and Two Brothers, for the benefit of the persons entitled thereto, the sum of one thousand seven hundred and four dollars and sixty-eight cents, the same being for fishing bounties to which said vessels became entitled to in the fishing season of the year 1852.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 221.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1856.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany Bill S. 375.]

The Committee on Pensions, to whom was referred the petition of Mrs. Eliza B. McNeill, widow of Captain T. B. McNeill, of the United States marine corps, praying a pension, beg leave to report:

That Captain T. B. McNeill, according to petition, served in the United States marine corps for a period of about twenty-one years, and that while in the line of duty contracted a severe rheumatism, which resulted in hypertrophy of the heart, from which he died, March 13, 1856. The evidence in the case seems satisfactory to the committee, and sufficient to establish the statements of petitioner. Viewing the petition, therefore, as one deserving favor, the committee submit the following resolution:

Resolved, That the committee report a bill for relief of petitioner, granting her five years' half pay of her husband, commencing April 25, 1856, when the testimony was completed.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 222.

IN THE SENATE OF THE UNITED STATES.

JULY 14, 1856.—Ordered to be printed.

Mr. JONES, of Iowa, submitted the following

REPORT.

[To accompany bill S. 376.]

The Committee on Pensions, to whom was referred the petition of Joseph Hill, praying an increase of pension, beg leave to report:

That the petitioner was wounded in his right arm by the accidental discharge of his rifle while on guard at Van Horn's wells, El Paso roads, Texas, July 20, 1855, from which wound he lost his arm. For this disability he was pensioned at the rate of eight dollars per month from the date of his discharge from service. This amount of pension being thought by your committee to be inadequate to his necessity, they therefore, believing this is a case worthy of special favor, submit the following resolution:

Resolved, That the committee advise the passage of an act granting Joseph Hill a pension of twelve dollars per month.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM No. 223.

IN THE SENATE OF THE UNITED STATES.

JULY 14, 1856.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 377.]

The Committee on Private Land Claims, to which was referred the petition of Ambrose Lanfear, praying confirmation of a survey of a certain tract of land in Louisiana, have had the same under consideration, and submit the following report:

It appears that the heirs of Paul Toups filed their claim, under a concession from the Baron de Carondelet, then the governor of the Spanish province of Louisiana, before the commissioners to adjust private land claims in the Territory of Orleans and District of Louisiana, and that said commissioners reported the said claim for confirmation, which said report was communicated to the House of Representatives on the 9th day of January, 1812, and, in reference to the claim of the heirs of Paul Toups, say: (Am. State Pap., public lands, vol. 2, page 324.)

"No. 74. The children of Paul Toups claim a tract of land, situated in the county of Acadia, at the place called *les Coteaux de France*, at about the distance of three and a half leagues from the western bank of the Mississippi, containing eighteen arpents in front, and a depth of two leagues and a half. Paul Toups, the father of the claimants, obtained from the Baron de Carondelet a regular warrant of survey for this land in the year 1796, for the purpose of establishing a vacherie; and the conditions of the warrant of survey having been complied with on his part, confirmed."

That, by the act of Congress, approved April 12, 1814, this claim, among others, was confirmed.

It further appears, that Daspit St. Amand filed his claims to lands by concession from the Baron de Carondelet before the commissioners appointed to adjust private land claims under the act approved February 27, 1813, which said commissioners, in their report, which was communicated to the Senate on the 20th day of January, 1817, (American State Papers, public lands, vol. 3, page 225,) class said claim as number 529 of the first class, which "comprehends such claims as stand *confirmed by law,*" and in reference thereto say:

"No. 529. Daspit St. Amand claims a tract of land situated in the county of German Coast, about nine miles from the banks of the Mississippi, and forming a part of a high ridge called *les Coteaux de France*. This tract fronts to a water course called Bayou Crocodile, and extends in depth to Bayou *Aux Cannes*, bounded on both sides by marshes, and containing 5,824 superficial arpents. This land is claimed by virtue of an order of survey, dated in the year 1796."

That, by the act of Congress approved May 11, 1820, this claim, among others, was confirmed.

The said Daspit St. Amand, about the year 1813, purchased all the interest of the heirs of Paul Toups in and to their said claim No. 74.

The petitioner in the year 1845 purchased from the estate of Daspit St. Amand the two tracts of land covered by claims Nos. 74 and 529, as aforesaid.

In 1854 and 1855 the United States caused the said claims to be surveyed by Maurice Hawké, a United States deputy surveyor, which surveys were approved and confirmed by W. J. McCulloh, surveyor general for the State of Louisiana, on the 5th day of May, 1855, as appears from a duly certified copy of the township map accompanying the papers.

On the 17th of July, 1855, the Commissioner of the General Land Office requested of the surveyor general of Louisiana to state the reasons upon which he had approved of the survey under said claim and certificate, No. 74, in the name of the children of Paul Toups, deceased.

Under date of the 1st September, 1855, the surveyor general gave his reasons for approving of the said survey in a communication to the General Land Office, of which the following is a copy:

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, Louisiana, September 1, 1855.

SIR: Pursuant to your instructions of the 17th of July, 1855, I now submit the reasons on which this office approved the contested location of "the children of Paul Toups, deceased." Certificate No. 74 of Robertson & Lewis, in townships 13 and 14 south, range 20 east, southeastern district, west of the Mississippi river.

The documentary evidence in the case consists of—

1st. Requête of Paul Toups, addressed to Carondelet.

2d. Order of survey by Carondelet.

3d. Application of 31st of December, 1806, by Toups' children, to the commissioners of the eastern district, for a confirmation of the inchoate title.

4th. Certificate of confirmation by commissioners.

5th. Commissioner's report on the claim.

Copies of the requête and order were transmitted to the department with my letter of May 5, 1855. The application of the children of Toups is so similar to the report of the claim, as published in the State papers, that a copy of it is unnecessary. The certificate of confirmation is the only muniment of title binding this office in locating *the claim; it is literally* as follows:

"The children of Paul Toups, deceased, are entitled to *a patent* for a tract of land situate in the county of Acadia, at the place called les Coteaux de France, at the distance of three and a half leagues from the western bank of the Mississippi, having eighteen arpents front, and two and a half leagues in depth, the same being claimed by virtue of an order of survey issued in the year 1776, and having been inhabited and cultivated on the first day of October, 1800.

"T B. ROBERTSON, } *Commissioners, &c.*
"JOSHUA LEWIS, }

"NEW ORLEANS, *December* 31, 1811."

The recent location of the claim, thus confirmed, was approved under the belief that the certificate, in the absence of fraud or error, precluded a departure from the dimensions prescribed by it, for the fourth section of the act of March 3, 1807, under which it was issued, makes it final against the government, "any act of Congress to the contrary notwithstanding." That section imposes upon the commissioners an observance of French and Spanish laws and customs, in issuing their final certificates, thus implying that certificates, contrary to those authorities, should not be final against the United States. It might be argued that this restriction devolves on this office the duty of comparing the certificate in question with those laws and customs, and of construing it accordingly; but it is believed that it is not empowered thus to sit in judgment on the legality of the commissioner's acts, and to determine the intricate and embarrassing question of conformity or non-conformity with colonial precedents. In case of a certificate manifestly violating this provision, the office might refuse to carry it out, without special instructions on the subject; but in the case of Toups no such difficulty exists, and the only question has, therefore, been, how shall the terms of the certificate be enforced? This involved the preliminary inquiry as to the point on the *Coteau*, whence the depth of two and a half leagues, specified in the certificate, should be computed. That the *Coteau de France*, now traversed by the New Orleans and Opelousas railroad was the locality meant, has never been a subject of doubt with the office. It appeared to be a fact at first glance, and a review of the case affords no grounds for questioning it. A beginning point for the location being thus the first consideration, it became necessary to examine evidence *dehors* the certificate. In that instrument the doubt orginating, the inquiry is a latent one, and hence a recourse to other evidence was not deemed inconsistent with the conviction that the certificate was, under the circumstances, an estoppel, as to ministerial and executive officers.

Toups petitioned for land extending from a great marsh beyond the bayou Aux Cannes to *Bayou Crocodile*. But much doubt exists as to the bayou meant in his requête, under the latter name, though none has been suggested as to the position of the *marsh*. On it the *Coteau* ends. The marsh itself is almost impenetrable, and has long been known as *le grand marais*. The office, then, regarding this as a reliable basis of operations, authorized the extension of the claim, thence two and a *half leagues, up the Coteau* towards the Mississippi

river, and approved the location accordingly. Two and a half leagues by eighteen arpents, the dimensions prescribed by the certificate, gave an area of 3,163.40 acres. Hawké's location, as approved, observing the width of eighteen arpents, gives an area of 3,227.34 acres, being an excess of only 63.94 acres. This inconsiderable discrepancy, in a claim so large and so vaguely defined, indicates the general accuracy of the location, and the fidelity with which the depth required has been adhered to. But it is said by squatters, in township 14 south, range 20 east, that the Bayou Crocodile meant by the *requête* is that which bounds Daspit St. Amand on the northeast, and that the contested claim should not extend further north than its southern bank. In weighing this objection, little consideration is due to the right, actual or alleged, of the squatters urging it. Some of them are precluded from the right of protesting, by the fact that they have squatted out of the claim; others by the fact that they squatted on the claim, after its location, with full knowledge that they were trespassers, and all appear to be mere adventurers, recently attracted to the country by the facilities for speculation, more or less laudable, afforded by the great highway now intersecting the region, and pretending for their improvements neither antiquity of settlement nor pecuniary value. The fact, however, thus urged, is intrinsically important, and as such worthy of examination, independently of the precarious and dubious rights of those pleading it.

It is admitted, by the parties interested in maintaining the location, that the cattle formerly kept in the *vacherie*, by Toups and his successors, were limited in their range to the southern bank of the Bayou Crocodile contended for by the squatters, and that a bridge formerly crossed it, defended by bars, to prevent the escape of the cattle. Hawké reports an old *vacherie* bridge at the same point, with the old vacherie road leading over it, and the bayou appears parallel to the Mississippi river. These circumstances all coincide with those mentioned in the requête; but that document, though calling for the south bank of "Bayou Crocodile," as the northern limit of the land petitioned for, asks for a depth of *two and a half leagues*, whereas a depth from "*le grand marais*" to the bridge is only about *one and a half* leagues. Were the call for *Bayou Crocodile* free from ambiguity, it would supersede those for area or numerical depth, on the general rule, that calls for course, distance, and quantity are subsidiary to calls for natural objects. But is the *reason* of this rule applicable to the present case? The object of evidence is the attainment of the greatest possible degree of certainty; and in view of this motive, the existence of natural boundaries being *facts* palpable to all men, and but little liable to misconception, such boundaries, in competition with imaginary lines, are justly entitled to the preference; for the latter are inherently liable to misconstruction, have no physical representation on the ground, and even when defined there, by lines and corners, are still liable to obliteration and change. Unfortunately, however, the fact of the Toups claim forbid the attainment of certainty, through any rule of interpretation. Bayous Crocodile are known throughout Louisiana; and it is proved, in *in this case, that the* location of Toups covers *three* streams of

that name—the bayou crossed by the vacherie bridge, the bayou which traverses and forms the *Coteau*, and a little bayou running *parallel to the Mississippi river*, and emptying into the second one now mentioned, about twelve chains above the intersection of the latter by the north boundary of township 14. It is this latent ambiguity in the term *Bayou Crocodile*, as occurring in the *requête*, which defeats the application of the general rule of evidence above, and has therefore induced the office to prefer the numerical call for depth, as affording, in the peculiar difficulties of the case, a greater probability of correctness than is afforded by the call for Bayou Crocodile.

The depth assigned by the certificate is equal to 606.05 chains; that obtained by the approved location is 642.90 chains, adopting as the test the lineal distances given in the SE. lines of the claim—a mode of measurement adopted by the deputy with the previous approbation of the office. The location thus manifests an excess in depth of 35.85 chains; and it is a singular coincidence, at least, that this distance deducted from the north end of the claim, by a line parallel to the backs of the 80 arpents tracts fronting on the Mississippi river, in township 13 south, ranges 20 and 21 east, would make the end line of the claim cross the bayou forming the *Coteau* at the mouth of the *third Bayou Crocodile*, above mentioned.

A location reaching the rear lines of the 80 arpents tracts has been approved, because the claimants have thus held the land for many years, (as will fully appear from the testimony transmitted to the Commissioner on 5th of May last,) and because such location gives a quantity more, in accordance with that resulting from the certificate, than would be obtained by the depth if limited to Third Bayou Crocodile above.

I have, as required, recalled the map of township 14 south, range 20 east, and diagram of township 13 south, range 20 east, from the register at New Orleans, and shall detain them until your decision be communicated to me.

Respectfully, your obedient servant,

WILLIAM J. McCULLOH,
Surveyor General, Louisiana.

Hon. THOS. A. HENDRICKS,
Commissioner General Land Office, Washington City, D. C.

—

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, Louisiana, June 9, 1856.

I certify the foregoing, with the interlineations on pages 5 and 8, to be a true copy of the original recorded in this office.

WILLIAM J. McCULLOH,
Surveyor General, Louisiana.

—

Aside from such surveys the petitioner and those under whom he claims, has been *in uninterrupted possession* of the said lands for up-

wards of sixty years; one of the claims has been confirmed over forty years and the other over thirty-five years.

Notwithstanding the fact of such possession, together with the survey, regularly made out and regularly approved, the General Land Office has instructed the surveyor general to cause the aforesaid survey to be obliterated, and all that part of the Toups claim north of Bayou Crocodile to be surveyed as public lands.

Your committee are of opinion that the survey of the Toups claim was made in accordance with the concession and the rules and orders of the Spanish government; they therefore cannot agree that the claimant shall be deprived of his lands, over which he has exercised ownership for so long a period of time.

From every consideration of justice and right the committee believe that the claimant is entitled to the said lands as surveyed and approved of by the surveyor general on the fifth day of May, 1855; they therefore report a bill confirming the said survey of the "Toups" claim, No. 74, as also the survey of the "St. Amand" claim, No. 529, and respectfully recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 224.

IN THE SENATE OF THE UNITED STATES.

JULY 14, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. WELLER made the following

REPORT.

The Committee on Military Affairs, to whom was referred "Papers relating to the claim of Major James Belger to be released from liability on account of public money under his charge, and out of which he was defrauded by his confidential clerk," having had the same under consideration, report:

Major Belger was quartermaster in the United States army stationed at Corpus Christi, in Texas, in June, 1855, and as such he there had a large amount of the public money under his charge. His clerk, J. S. Sheahan, to whom he confided the care of his money, defrauded him out of $8,372 25¾ by false entries in his books; and it is from liability to account for this sum that application is now made for relief.

Soon after this defalcation was discovered, Major Belger called a court of inquiry, (in August, 1855,) by which he was acquitted in the fullest degree of anything that could cast the slightest shadow on his integrity, but at the same time the court disapproved of the practice of committing to any irresponsible agent, however long tried, or under any circumstances whatever, the custody of, or access to, the public funds which government confides to disbursing officers.

The committee agreeing with the court in the opinion, recommend that Major Belger be not relieved from liability for this loss. The false entries were made while Major Belger was present, and while it was his duty to give personal attention to his accounts and money, and he has been defrauded in consequence of a want of proper diligence and care over the funds entrusted to him, and not by an unavoidable accident.

The committee ask to be discharged from the further consideration of the case.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 225.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 378.]

MAY 12, 1856.—Received from the Court of Claims, and referred to the Committee of Claims.
JULY 15, 1856.—Reported by Mr. Brodhead and ordered to be printed.

SALVADOR ACCARDI *vs.* THE UNITED STATES.

The opinion of the court was delivered by Chief Justice Gilchrist.

This case comes before us by a resolution of the House of Representatives, and is submitted to us by consent, upon the evidence referred to us by the House.

The petitioner entered the naval service in the year 1830, and served for a period of eighteen years at various times and in different vessels. He was regularly discharged as his successive terms of enlistment expired, his last discharge bearing date on the 22d of September, 1852. He performed the duties of a first-class musician, and is so described in his last discharge. A strong testimonial to his character is borne by Captain Lavalette, who certifies, under the date of July 26, 1841, that the petitioner served as a musician on board the Ohio, under his command, for a period of thirty months, during which he conducted himself to Captain Lavalette's satisfaction, and he says: "I can confidently recommend him as a good musician, and consider him perfectly competent to teach music."

In relation to the disability of the claimant, Dr. Whelan, the chief of the Bureau of Medicine and Surgery in the Navy Department, states, under the date of March 14, 1854, as follows: "Salvador Accardi, late musician in the United States navy, was transferred from the United States steamship Mississippi to the United States ship Independence, in the harbor of Spezzia, Italy, in October, 1851, and served on board till the ship was paid off in New York, in July, 1852, when, in consequence of an injury sustained during the passage home, he was transferred to the Naval Hospital, New York.

"Accardi was lame of the left knee when he joined the Independence, but performed all the duties required of him, as he had previously on board the Mississippi, till a fall down one of the hatchways produced an ulceration of some old scars about the knee joint, for which he was sent to the Naval Hospital, New York.

"I was surgeon of the Independenca at the time of Accardi's accident, and it was by my request he was transferred to the New York hospital."

Under the date of March 1, 1854, Dr. Eversfield, of the navy, certifies as follows: "*I hereby certify* that Salvador Accardi served with

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 226.

IN THE SENATE OF THE UNITED STATES.

JULY 18, 1856.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany Bill S. 389.]

The Committee on Private Land Claims, to which was referred the petition of the heirs of Manuel Gonzales Moro, praying authority to locate a certain quantity of land, have had the same under consideration, and submit the following report:

That, under the act of Congress, entitled "An act for the final adjustment of private land claims in Missouri," approved July 9, 1832, and the act supplemental thereto, approved March 2, 1833, the said Moro filed his claim to 7,056 arpents before the commissioners, who, under date of November 27, 1833, made a report of their action upon the cases filed with them, which said report was communicated to Congress on the 18th day of January, 1834.—(See Ex. Docs. 1st session 24th Congress, No. 59.)

The commissioners, in their said report, number the claim of Moro as No. 94, of the first class, and, in reference thereto, say:

"Manuel Gonzales Moro, claiming 7,056 arpents of land. The board are unanimously of opinion that this claim ought to be confirmed to the said Manuel Gonzales Moro, or to his legal representatives, according to the concession."

By the act of Congress entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved July 4, 1836, all the claims reported upon favorably by the said commissioners were confirmed to the respective claimants.

This claim had no actual location under the Spanish government, nor neither had there been a survey or location of this claim prior to the decision of the board of commissioners.

A survey of 7,056 arpents was made in 1837 to satisfy the claim of Moro, and, upon application for a patent, the Commissioner of the Land Office decided that the survey of 1837 could not be recognized, and that, "although the claim is confirmed, yet, being of the category of what are known as 'floating claims,' it cannot be satisfied by any specific allotment of land, without the further intervention of Congress, conferring special authority for such an allotment."

Attorney General Gilpin, in an analogous case, on the 5th of February, 1841, (Opinions of Attorneys General, p. 1377,) says:

"I am of opinion that the first section of the act in question (act of 1836) fully confirms and gives a valid title under the grant to the sons of Benito Vasquez, but I do not think that, without further legislation, the same can be located upon public lands of the United States. This can never be done except by authority from the legislature; and the law in question, though it confirms the grant, does not provide for its location."

By the act of Congress approved January 12, 1855, the legal representatives of Benito Vasquez were authorized to locate a quantity of land equal to that confirmed by the act of 1836.

In view of all the facts connected with this case, as well as the precedent established, your committee are unanimously of the opinion, that Manuel Gonzales Moro, or his legal representatives, ought to have authority to locate the quantity of land confirmed to said Moro by the said act of 1836, upon any of the public lands of the United States, subject to entry at the minimum price. They have, accordingly, directed me to report the accompanying bill, and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 227.

IN THE SENATE OF THE UNITED STATES.

JULY 18, 1856.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany Bill S. 390.]

The Committee on Private Land Claims, to which was referred the petition of John Dick, praying that a patent may be issued to him for land settled by him under permit granted by the register of the land office at St. Augustine, Florida, have had the same under consideration and submit the following report:

Under the provisions of the act of Congress for the armed occupation and settlement of the unsettled part of the peninsula of East Florida, approved August 4, 1842, the petitioner filed his notice with the register of the land office at St. Augustine, for a "permit" to settle upon one hundred and sixty acres of land, south of the line dividing townships numbered nine and ten, and described as follows: Lot No. 10 in section 29, lot No. 1 in section 31, fractional section 30, and the northwest of the northwest quarter of section 32, all of township 10, range 27 south and east, containing in the aggregate 153.20 acres.

On the 16th of April, 1843, the register of the land office issued "permit" No. 43 to the petitioner, giving him permission to settle upon the lands solicited, under the conditions of the said act; one of which was, "that no right or donation shall be acquired under this act within two miles of any permanent military post of the United States, established and garrisoned at the time such settlement and residence was commenced."

This permit was cancelled by the General Land Office, on the ground that the land embraced therein had been reserved in 1841 for military purposes.

The petitioner proves to the satisfaction of the committee, that prior to his permit being cancelled he had complied with the requisitions of said act, and also proves that his settlement was not within four miles of any military post established and garrisoned at the date of his settlement, or at any time subsequent thereto; that he was compelled to relinquish and abandon his settlement by virtue of such cancellation of his "permit;" and that since that period he has continued to reside south of the line specified in the said act of Congress, and has *not received lands under the* said act.

The military reservation made by Mr. Van Buren, then President of the United States, embraced the south half of township nine, the whole of township ten, and fractional township eleven south, of ranges twenty-six and twenty-seven, giving a width from east to west of twelve miles, and a length from north to south of fifteen miles.

To ascertain the particulars in reference to such military reservation, the chairman of the committee addressed a letter to the honorable Secretary of War, in answer to which the said Secretary communicated a report from the Quartermaster General, of which the following is an extract: "I have the honor to state that the lands claimed by Mr. Dick are believed to be more than two miles from the post at Pilatka. The reserve was made, by the President, on the 19th of February, 1841; the act, for the benefit of which Mr. Dick applies, was passed in 1842. * * The lots or lands claimed are not now used for military purposes; and it is believed they will not be necessary for such purposes at any future time." In the conclusion of said report, in reference to the whole of the said reservation, he says: "It is no longer necessary for any military uses, and I recommend that it will be transferred to the Land Department for sale."

In 1850 Congress passed an act giving one hundred and sixty acres of land to Richard H. Barrett within the said reserve, under similar circumstances of this case.

The committee are of opinion that since these lands are now no longer used for military purposes, and the petitioner having continued to reside south of the line specified by said act, thereby aiding to effect the object designed by making donation grants, and has not availed himself of the benefits of said act by settling upon other lands, that Congress ought to grant him the lands upon which such settlement was made by virtue of said "permit" from the register, they therefore report the accompanying bill and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 228.

IN THE SENATE OF THE UNITED STATES.

JULY 18, 1856.—Ordered to be printed.

Mr. WADE made the following

REPORT.

The Committee of Claims, to whom was referred the petition of George M. Weston, in behalf of sundry citizens of Maine, report:

By the fourth article of the treaty of Washington, for the settlement of the northeastern boundary it was stipulated that "all grants of land heretofore made by either party, within the limits of the territory, which by this treaty falls within the dominion of the other party, shall be held valid, ratified and confirmed to the persons in possession under such grants to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims, arising from a possession or improvement of any lot or parcel of land, by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall in like manner be deemed valid," &c.

It appears that by virtue of this stipulation sundry small tracts of land lying in the disputed district, to which various persons held title, derived from the States of Maine and Massachusetts, and which by the treaty fell within the limits of the United States, thereby confirming the legality of the grants made by those States, but which had also been granted by the authorities of New Brunswick to other parties, or to which other parties had obtained possessory rights, have been confirmed by competent judicial decisions to the last mentioned parties, thereby depriving the legal owners of their property. These decisions rest upon the ground that treaties made in pursuance of the Constitution are the supreme law of the land, and that the property of which citizens may be dispossessed by the direct stipulations of a treaty is to be regarded as taken for public use, for which a just compensation is to be made.

The Senate has already passed a bill for the relief of one of these claimants, but as it appears that there is a considerable number of these claimants, each for a small amount, it would be a great hardship to subject them, individually, to the difficulty and expense of coming to Congress with the requisite evidence to substantiate their claims.

In the somewhat analogous case of the claims arising under the act

for the armed occupation of Florida, an agent was directed to be appointed to take testimony and receive proof in the vicinity, by which claimants were enabled to make their proof with little trouble or expense, and in the presence of rival claimants and others interested.

The committee think that a similar plan may properly be adopted in reference to these claims. If these persons have been deprived of their lands, by the exercise of the sovereign power, and for the public benefit, it is clearly right that just compensation should be made them, without their being subjected to any unnecessary delay or expense; and this it is the purpose of the proposed plan to accomplish, and, at the same time, to protect the government from imposition of false claims or exaggerated estimates of value.

The committee recommend the adoption of the accompanying resolution:

Resolved, That the Committee of Claims be authorized to appoint an agent to take and receive proof, in such manner as the committee shall prescribe, as to the claims of individuals described in the memorials of George M. Weston, commissioner of Maine, now pending before the committee, to be reported to the committee at the next session of Congress.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 229.

IN THE SENATE OF THE UNITED STATES.

JULY 18, 1856.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 392]

The Committee on Private Land Claims, to which was referred the petition of Andrew A. H. Knox and Joseph O. Campbell, praying confirmation of their title to certain lands in the Baron de Bastrop grant, have had the same under consideration, and submit the following report:

The "Act for the settlement of certain classes of private land claims within the limits of the Baron de Bastrop grant," &c., approved March 3, 1851, provides: "That in the event of a final adjudication by the court, in favor of the United States, on the 'Baron de Bastrop' claim in Louisiana," the register and receiver of the Ouachita land district should give public notice of such fact, and it should be "lawful for any original claimants of the classes hereinafter mentioned, their heirs or legal representatives, to file with the aforesaid register and receiver notices descriptive of their claims, and specifying their precise localities and area, with the testimony in support of the same."

The second class of claimants mentioned is as follows: "All *bona fide* claimants of 'head rights' for not exceeding six hundred and forty acres, their heirs or legal representatives, where the original claimant came over and settled the land under the contract between the Spanish government and De Bastrop, even though the land was not actually sold or conveyed to such original claimants by the said De Bastrop."

Under the said act the petitioners Andrew A. H. Knox and Joseph O. Campbell, respectively, filed their claims before the said register and receiver, together with the evidence in support of the same, and upon which the said commissioners reported as follows: (Ex. Doc. No. 4, 2d session 32d Congress, pp 15 and 17.)

In the case of Andrew A. H. Knox, they say:

"No. 3. Andrew A. H. Knox claims six hundred and forty acres of land. This claim is founded on the agreement of Baron de Bastrop and the emigrants, under the contract between him and the Spanish government. It is proven that James de Hart, the original

claimant, came over with his father, who emigrated and settled under the contract in the year 1797; and that he lived to attain the age of majority, stipulated in said agreement. No land was actually conveyed to the original claimant, De Hart. He was therefore entitled, under the agreement, to four hundred acres only. The sales are all authentic, and make a *bona fide* title in the present claimant for four hundred acres. We are, therefore, of the opinion that this claim ought to be confirmed for four hundred acres; and that the location made by the claimant be recognized as prayed for."

In the case of Joseph O. Campbell they say:

"No. 9. Joseph O. Campbell claims four hundred acres of land as a head right due to his father, Charles Campbell, deceased. The testimony establishes that said Charles Campbell came over and settled under the contract between the Spanish government and the Baron de Bastrop. It is also proven that the present claimant is the sole heir of said Charles Campbell, deceased. No land was actually conveyed to the original claimant, Charles Campbell; but the present claimant has caused his head right to be located upon lands unclaimed and unoccuped. We are of the opinion that this claim ought to be confirmed to the claimant, Joseph O. Campbell, and that the location of said head right should be recognized."

The above reports, together with the testimony, was communicated to Congress on the 9th day of December, 1852, in conformity with the provisions of the said act, for final action thereon.

By the act of Congress, entitled "An act confirming certain land claims in Louisiana, in the Bastrop grant," approved June 29, 1854, it is provided, "That such of the claims entered in the report, dated 30th July, 1852, of the register and receiver at Monroe, Louisiana, as in their opinion ought to be confirmed, according to the principles recognized in the act of Congress of the 3d March, 1841, (1851,) pursuant to which the said report was made, be, and the same are hereby, confirmed for the extent and under the limitations referred to in the opinions of the said officers."

To which act of confirmation there is the following proviso: "*Provided*, That if in any case a claim confirmed by this act was not actually located prior to the 3d of March, 1851, no location of the same shall be made to the prejudice of any actual settler, but such floating claim may be located on any public lands in the Ouachita district to which there may be no existing pre-emption or other valid claim, under such regulations as may be prescribed by the Commissioner of the General Land Office."

The two tracts of land in question were located subsequent to the 3d day of March, 1851, to wit: No. 3 was located on the 22d day of May, 1852, and No. 9 on the 16th day of June, 1852. The United States deputy surveyor certifies in each case that "there was no person living on the above described location" at the respective dates of such location and survey; and the register and receiver report that the location of claim No. 9 was "upon lands unclaimed and unoccupied," from which your committee are fully satisfied that such claims were not located "to the prejudice of any actual settler."

The claimants made application to the Land Office for patents for

the lands confirmed by the said act of 29th June, 1854, and the Commissioner of the Land Office decided that, as the lands in question were located subsequent to the 3d March, 1851, he could not issue a patent therefor; but such claims became floats, and was to be located under certain regulations prescribed by the Commissioner of the General Land Office, in pursuance of the powers conferred upon such Commissioner by the last clause of the said confirmatory act.

The committee are of opinion that the petitioners are legally entitled to patents for the lands confirmed by the said commissioners, and the said act of 29th June, 1854.

The only construction that can be given to the proviso of the said act of 29th June, 1854, is that, if a location was made subsequent to the 3d March, 1851, such location should not "be made to the prejudice of any actual settler;" then, if no actual settler was upon the lands at the date of the location, no subsequent settlement could defeat the location of the claimants, but such location was, to all intents and purposes, of as much binding force as if located prior to the 3d day of March, 1851.

The Commissioner of the General Land Office having refused to issue patents to the claimants, the only alternative is to pass an act authorizing such Commissioner to issue a patent, as contemplated by the said act of March 3, 1851.

The committee have therefore directed me to report the accompanying bill, and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 230.

IN THE SENATE OF THE UNITED STATES.

JULY 18, 1856.—Ordered to be printed.

Mr. BENJAMIN made the following:

REPORT.

[To accompany Bill S. 393.]

The Committee on Private Land Claims, to which was referred the "memorial of John Temple, praying a confirmation of his title to a tract of land within the Bastrop grant," have had the some under consideration, and submit the following report:

The claim of John Temple was not filed with the commissioners under the act of 1851, providing for the adjustment of private land claims in the Baron de Bastrop grant, on the ground, as he alleges in his memorial, that he believed his claim was confirmed with the Bonaventure claim, which it adjoins.

The committee find a regular chain of title from Morehouse to John Temple. The claimant and the persons under whom he holds have been in uninterrupted possession of a part of the lands since 1807, and the remainder since 1812 and 1814, and the same has been inhabited and cultivated from the dates, respectively, up to this time. Two affidavits, accompanying the papers, show that the lands have been inhabited and cultivated for more than twenty years.

Your committee are unanimously of the opinion, that if this claim had been presented to the commissioners under the act of 1851, with the proofs now before the committee, that such commissioners would have recommended this claim for confirmation.

The omission of the memorialist to present his claim to the commissioners ought not, in the opinion of the committee, defeat the rights of the claimant under the act of 1851; they, therefore, report a bill to confirm the memorialist in his title to six hundred and seventy arpents of land, being the tract which he holds by a regular chain of title from Morehouse, and upon which he now resides; and respectfully recommend the passage of the bill.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 231.

IN THE SENATE OF THE UNITED STATES.

JULY 18, 1856.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 275.]

The Committee on Private Land Claims, to which was referred Senate bill No. 275, *a bill giving to Joshua Kirby and the widow of John McNary the right to enter the land covered by the life reserve of John McNary under the Cherokee treaties of* 1817 *and* 1819, *have reconsidered their former action upon the same, and submit the following report:*

Additional papers have been filed in this case, showing that John McNary, a Cherokee, was entitled to a reserve of 640 acres of land under the Cherokee treaties of 1817 and 1819.

It is alleged that said McNary continued to reside upon the said reservation, from the date of the treaty of 1817 up to the date of his death, which occurred in 1841.

The 8th article of the treaty of 1817 provides that "to each and every head of any Indian family residing on the east of the Mississippi river, on the lands that are now, or may hereafter be surrendered to the United States, who may wish to become citizens of the United States, the United States do agree to give a reservation of 640 acres of land, in a square, to include their improvements, which are to be as near the centre thereof as practicable, in which they will have a life estate, with a reversion in fee simple to their children, reserving to the widow her dower, the register of whose names is to be filed in the office of the Cherokee agent, which shall be kept open until the census is taken, as stipulated in the 3d article of this treaty: *Provided*, That if any of the heads of families, for whom reservations may be made, should remove therefrom, then, in that case, the right to revert to the United States."

The 2d article of the treaty of 1819 provides that "the United States * * * do agree to allow a reservation of 640 acres to each head of any Indian family residing within the ceded territory, those enrolled for the Arkansas excepted, who choose to become citizens of the United States, in the manner stipulated" in the treaty of 1817.

Under the above treaties, upon the conditions being complied with, there was an absolute grant of a life estate to John McNary, with the remainder in fee to his children, subject to the dower of his widow.

It is alleged that John McNary and his wife, in the year 1825, sold and conveyed by deed all their right and interest in the one half, or 320 acres of the said reservation to Joshua Kirby; and that the heir-at-law and only child of said McNary and her husband, (she then being a married woman,) executed a title bond, conditioned that they would convey the fee simple of the said one half of said reservation to the said Kirby upon the death of the said John McNary, which it is alleged never was done.

The said Kirby, therefore, holds only an equitable title to the one-half of said reservation.

It appears that said Kirby, and those claiming under him, have been in uninterrupted possession of certain lots numbered 2, 3, 4, 5, 6, 7 and 8, within the said reservation, from the year 1825 up to the present time.

The committee are of opinion that no injustice will be done the government or the parties concerned, by authorizing a patent to be issued to the said Joshua Kirby for the one-half of the said reservation, which he holds by equitable title; they, therefore, report the accompanying bill as a substitute for said Senate bill No. 205, guarded so as to protect the rights of the government and third persons, and respectfully recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 232.

IN THE SENATE OF THE UNITED STATES.

JULY 18, 1856.—Ordered to be printed.

Mr. GEYER made the following

REPORT:

[To accompany Bill S. 394.]

The Committee of Claims, to whom was referred the memorial of the special agents of the State of Maryland, praying that the State may be reimbursed for advances made by her to the United States in 1792 *and* 1793, *report:*

This is an application for the reimbursement to the State of Maryland of a sum of money received from that State in aid of the construction of the public buildings, at the time of the establishment of the permanent seat of government in the city of Washington. A similar application has been heretofore repeatedly made by the assignees of the State of Virginia for the reimbursement of money received from that State at the same time.

The facts upon which these applications are based, and the circumstances and inducements with which they were connected, are believed to be correctly stated in the report of Mr. Brodhead, chairman of the Senate Committee of Claims, at the 1st session 32d Congress, No. 59; and the report of Mr. Underwood, from the same committee, at the 1st session 31st Congress, No. 147; both of which are hereto annexed and made a part of this report.

In connexion with these statements of the facts, the committee have agreed to submit, for the consideration of the Senate, the annexed bill, unaccompanied with any recommendation on the part of the committee.

IN SENATE—*January* 30, 1852.

The Committee of Claims, to whom was referred the petition of the Orange and Alexandria Railroad Company, in the State of Virginia, with the documents which accompany it, have had the same under consideration, and report:

This petition is based upon the following resolution, adopted 15th March, 1850:

"*Be it resolved by the General Assembly of Virginia*, That the claim of this commonwealth against the government of the United States for the sum of one hundred and twenty thousand dollars, advanced to the United States, by an act of the General Assembly, passed the

27th day of December, 1790, be and the same is hereby transferred to the Orange and Alexandria Railroad Company, and that said company be empowered to demand and receive the same, and the interest thereon; and when recovered of the United States, the said Orange and Alexandria Railroad Company shall issue, for the net amount of such recovery, certificates of stock in the company aforesaid, as so much additional stock therein, to the president and directors of the literary fund, which shall be held by them, to the use and benefit of the primary schools, for the purposes of primary education in the commonwealth."

The company having thus become the assignee of the State, asks the return to it of the amount furnished by Virginia towards the erection of the public buildings, on the establishment of the permanent seat of the government of the United States in this District.

The claim was presented to both houses of the last Congress. The Committee of Claims of the House of Representatives made a favorable report, accompanied by a bill providing for the payment of the claim asserted, but it failed to receive the action of the House.

The Senate Committee of Claims, to whom the subject was referred, made a report of facts which they deemed it most proper to submit, and ask the instructions of the Senate upon them. A bill was subsequently passed by the Senate, for the relief of the company.

The claim having been again presented to the Senate, and being for a large amount, and asserted by one of the States, they have deemed it to be their duty to give the subject a full and deliberate consideration, and to bring to the notice of the Senate facts, history and views not heretofore presented.

It sufficiently appears, from the records of the proceedings of the "commissioners of the federal buildings," that the sum of $120,000 was received by them from the treasurer of Virginia, upon orders drawn by the President of the United States, and that it was expended by them in carrying on the objects of their appointment.

This money appears to have been paid to the treasurer of the board, and to have been merged in the general fund, applicable to the purposes of erecting the public buildings, and making the other necessary preparations for the reception of the government.

The first and principal question presented for consideration is, whether this sum was understood and intended by the parties to be in the nature of an advancement or loan to the general government, to be repaid, either with or without interest? or whether it was a gift or grant of money, in consideration of the seat of the federal government being located on the banks of the Potomac?

In order to arrive at a proper understanding and determination of this question, it was deemed necessary to fully examine the records and history of the proceedings connected with the location of the seat of the federal government.

The States of New York and Pennsylvania, by acts of their respective legislatures, furnished to Congress the use of all necessary public buildings during the time it held its sessions in their respective States. New Jersey also offered the use of public buildings.

On the 23d December, 1784, Congress passed a resolution for the erection of the necessary buildings for the permanent use of the Congress and the public functionaries, near the falls of the Delaware, for which purpose one hundred thousand dollars was appropriated. Commissioners were appointed to carry this resolution into effect; but no

further progress was made until May 10, 1787, when Mr. Lee of Virginia moved the following resolution:

"*Resolved*, That the board of treasury take measures for erecting the necessary public buildings, for the accommodation of Congress, at Georgetown, on the Potomac river, so soon as the soil and jurisdiction of the said town are obtained, and that on the completion of the said buildings, Congress adjourn their sessions to the said federal town.

"*Resolved*, That the States of Maryland and Virginia be allowed a credit in the requisition of 1787, or in the arrearages due on past requisitions, for such sums of money as they may respectively furnish towards the erection of said buiidings."

This motion was lost. Affirmative, Massachusetts, New York, Virginia, and Georgia. Negative, New Jersey, Pennsylvania, Delaware, Maryland, and North Carolina.

In 1787 the new constitution was adopted, leaving the resolution for establishing a seat of the federal government on the banks of the Delaware unexecuted. New York having appropriated its public buildings to the use of the new government, Congress met in that city, and on the 6th April, 1789, a quorum of both Houses appeared and proceeded to business. On the 15th May following, Mr. White from Virginia presented to the House of Representatives a resolve of the legislature of that State, offering to the federal government ten miles square of its territory, in any part of that State which Congress may choose, as the seat of the federal government. On the next day, Mr. Seney, of Maryland, submitted an act of that State, offering to the acceptance of Congress ten miles square of its territory, for the seat of the federal government.

These were the first movements, under the new constitution, towards the establishment of the seat of government. Numerous memorials and petitions followed, from citizens of Pennsylvania, New Jersey, and Maryland, for the selection of a site in their respective States.

On the 5th September, 1789, a resolution passed the House of Representatives, "that the permanent seat of government of the United States ought to be at some convenient place on the banks of the Susquehanna, in the State of Pennsylvania."

On the introduction of the bill to carry this resolution into effect, much feeling was manifested by the southern members, and particularly by the members from Virginia, who earnestly contended that the banks of the Potomac was the most sutiable location. Mr. Madison thought, if the proceeding of that day had been foreseen by Virginia, that State might not have become a party to the Constitution.—(Annals of Congress, vol. 1, page 890.) The bill was passed by the house, by a vote of ayes thirty-one, noes seventeen. It was amended in the Senate by striking out all that part respecting the Susquehanna, and inserting a clause fixing the permanent seat of government at Germantown, Pennsylvania, and also providing, "that the law should not be carried into effect until the *State of Pennsylvania, or individual citizens of the same, should give security to pay one hundred thousand dollars, to be employed in erecting the public buildings.*"

These amendments were agreed to by the House, with an amendment providing that the laws of Pennsylvania should continue in force in said District, until Congress should otherwise direct. The bill was then returned to the Senate, and the consideration of the amendment

of the House was postponed to the next session. Germantown, therefore, was actually agreed upon by both Houses, but the bill failed on account of a slight amendment.

When the subject came up at the next session, Mr. Smith, of Maryland, proposed Baltimore as the location, and said that the inhabitants of that place had *raised a subscription of between twenty and thirty thousand pounds, to erect suitable buildings.*

In the mean time, the legislature of Virginia (on the 3d December, 1789) passed an act, ceding to Congress a district for the location of the seat of government in that State; also a resolution directing that law to be transmitted to the general assembly of Maryland *without delay*, asking the co-operation of that State in the effort to get the seat of government fixed on the banks of the Potomac.

The following is the Virginia resolution:

"*Resolved by the General Assembly of Virginia*, That a copy of the foregoing act of the 3d December, 1789, be transmitted to the general assembly of Maryland without delay; and that it be proposed to said assembly to unite with this legislature in an application to Congress, *that in case Congress shall deem it expedient to establish the permanent seat* of the government of the United States on the banks of the Potomac, so as to include the cession of either State, or a part of the cession of both States, *this assembly will pass an act for advancing a sum of money, not exceeding one hundred and twenty thousand dollars*, to the use of the general government, to be applied in such manner as Congress shall direct, towards erecting public buildings, the said assembly of Maryland, on their part, advancing a sum not less than two-fifths of the sum advanced by this State for the like purpose."

On the receipt of the Virginia resolution, the assembly of Maryland passed a similar resolution, agreeing to cede the necessary territory, and to furnish seventy-two thousand dollars towards the erection of the public buildings.

New York and Pennsylvania had gratuitously furnished "elegant and convenient accommodations" for the use of the government, during the eleven years that it was located within their respective limits, as appears from the resolutions passed by Congress on its removal. They had offered to continue to do so. New Jersey offered accommodations at Trenton. The citizens of Baltimore, though their representatives, proposed to furnish money for the erection of the necessary buildings, in that "town," for the federal government. One hundred thousand dollars had been *required to be paid by Pennsylvania, or its citizens, as a condition of the location of the government in that State.*

This was the state of things when the propositions of Virginia and Maryland were brought forward, to advance one hundred and ninety-two thousand dollars, "to be applied towards erecting public buildings at the permanent seat of the government of the United States, on the banks of the Potomac."

On the 31st May, 1790, a bill was introduced into the Senate, to determine "the permanent seat of Congress, and the government of the United States," On the 28th June, this bill being under consideration, memorials were read from citizens of Baltimore, and from inhabitants of Georgetown, for the selection of those places; and a motion being made to insert—"on the river Potomac, at some place between the mouth of the Eastern branch and the Connogocheque, be, and the same is hereby accepted, for the permanent seat of the government of the United States,"—it passed in the affirmative.

The bill was further amended, as follows:

"*And be it further enacted*, That for defraying the expense of such purchases and buildings the President of the United States be authorized and requested to *accept grants of money*, and cause to be borrowed a sum not exceeding one hundred thousand dollars, at an interest not exceeding six per cent.," &c.

In this form the bill was sent to a select committee, consisting of Messrs, Butler, of South Carolina, Johnson, of Connecticut, Henry, of Maryland, Lee, of Virginia, and Dalton, of Massachusetts. In their report on this part of the bill is the following proposition:

"Your committee further recommend, that such sums of money as may be offered by the States for the carrying this bill into effect may be accepted of; then the bill will read thus—"and to accept grants of money or land.'"

The bill was accordingly amended by striking out that part which authorized the borrowing of money for the erection of the public buildings. Yeas nineteen, nays seven. A motion was subsequently made to restore the clause, "and cause to be borrowed a sum not exceeding one hundred thousand dollars, at an interest not exceeding six per cent.," and it was negatived without a division.

The "act for establishing the temporary and permanent seat of the government of the United States," passed, and was approved by the President on the 16th of July, 1790, fixing the "permanent seat" on the banks of the Potomac, in accordance with the propositions of the legislatures of the States of Maryland and Virginia—and the "temporary seat" at Philadelphia.

In the act, as passed, no authority was granted to borrow money or contract for or accept a loan on any terms, either with or without interest. On the contrary, such authority was expressly denied. It is a general rule that all are bound to take notice of the provisions of a public law. By the fourth section of the act, the President was "authorized and requested *to accept grants of money.*" And to this *acceptance of grants* his authority was clearly limited. It is not to be presumed that the authorities of Virginia did not know or understand the provisions of this law.

Did President Washington transcend these limits as prescribed by Congress, when he received from the States of Virginia and Maryland the several sums of money appropriated by their respective legislatures "to be applied towards erecting public buildings at the permanent seat of the government of the United States on the bank of the Potomac?"

On the 22d of January, 1791, as appears by the manuscript records in the office of the Commissioner of Public Buildings, President Washington appointed Thomas Johnson and Daniel Carroll, of Maryland, and David Stuart, of Virginia, commissioners under the act of 16th July, 1790, and on the 24th day of the same month he issued his proclamation fixing the "location of one part of the said district of *ten miles square*" on the Virginia side of the Potomac, and the "other part" on the Maryland side. The commissioners met on the 12th April, 1791, and proceeded to execute the duties of their trust. Their first object was to locate city, acquire the title to the soil, and fix the sites for the principal public edifices. And having accomplished these preliminaries, they applied to the President for the necessary funds to carry on their operations. As many of the public lots as could be pro-

perly disposed of were directed to be sold, and the proceeds to be placed in the treasury, and application was made to the President for orders on the States of Maryland and Virginia for the payment of the instalments pledged by those States. In a letter of President Washington addressed to the commissioners, from Richmond, dated 13th April, 1791, he says:

"Agreeable to the assurance given to Mr. Carrol, I applied, immediately upon my arrival in this city, to Gov. Randolph, for two thousand dollars for federal purposes, under your direction; although, by the law of this state the payments of the $120,000 are to be made by instalments, the governor is well disposed to advance the money at earlier periods.

"P. S.—Since writing the foregoing I have again conversed with Gov. Randolph, and have drawn upon him, payable to your order, for forty thousand dollars, being the first instalment."

Governor Randolph also wrote to the commissioners, acknowledging the receipt of the order, and saying that he would meet it as fast as the state of the treasury would allow, and that $1,000 would be paid immediately.

The commissioners also addressed a communication to the Governor of Maryland, asking for the payment of "*money granted*" by that State.

On the 6th of June, 1792, the commissioners wrote to the governor of Virginia as follows: "There remains behind a part of the *Virginia donation*, which was receivable for the past year, and urging the necessity of immediate payment."

The following, in reference to the second instalment of Virginia, appears upon the records of proceedings of the board of commissioners of the federal city, viz:

"Received sundry letters and among them one from the Secretary of State, enclosing the following order:

"PHILADELPHIA, *November* 13, 1792.

"SIR: Be pleased to pay to Messrs. Johnson, Stuart and Carroll, commissioners of the federal buildings on the Potomac, or to their order, or to the order of any two of them, the *second instalment of the money granted by the State of Virginia*, towards the said buildings.

GEORGE WASHINGTON.

"The TREASURER OF VIRGINIA."

"On the President's order the commissioners made the following endorsement, and delivered it to their treasurer, to wit:

"Pay the contents to Colonel William Deakins, or order.

"DAVID STUART,
"DANIEL CARROL,
"*Commissioners.*"

This order was forwarded to the commissioners, enclosed in a letter from Thomas Jefferson, then Secretary of State, in which he says, "I have the honor to enclose you the President's order on the treasurer of Virginia for the *second instalment of the money* GIVEN *by that State.*" [See manuscript letter of Mr. Jefferson, dated 13th of November, 1792, on file in the office of Commissioner of Public Buildings.] A similar record appears in reference to the payments of Maryland, viz:

[Record of proceedings of the Board of Commissioners.—Pages 70 and 170.]

"PHILADELPHIA, *December* 27, 1791.

"SIR: Be pleased to pay to Thomas Johnson, David Stuart and Daniel Carroll, esqs., Commissioners of the Federal District, or to their order, or to the order of any two of them, twenty-four thousand dollars *given by the Assembly of Maryland* towards defraying the expenses of the public buildings within said district.

"GEORGE WASHINGTON.

"THOMAS HOWARD, Esq.,
"*Treasurer of the Western Shore of Maryland.*"

This order was endorsed by the commissioners to William Deakins, jr., their treasurer, and upon it the money appears to have been paid. This would seem to settle very clearly the understanding of General Washington, Mr. Jefferson, and of the executive officers of Maryland and Virginia, of the nature of the "advance" made by those States. A similar order for "the third instalment of the sum given by the Assembly of Maryland," &c., was given by General Washington, dated March 2, 1793.

On the 7th February, 1793, the commissioners, in a communication to Mr. Jefferson, says: "We have as yet received only $10,000 on the President's second draft on Virginia. We have to-day writen to the executive of Virginia, requesting a payment of the balance."

They also address urgent memorials to the governor and to the assembly of Virginia, earnestly and repeatedly soliciting the payment of instalments of the "donation of Virginia" and the "Virginia donation towards erecting the public buildings." In the records and books and in the correspondence of the commissioners, whether with the President, the governor of Virginia, the general assembly of that State, or with other persons, whenever this fund is alluded to, it is designated as the "donation," "grant" or "gift" of Virginia.

Mr. Edmund Randolph, Secretary of State, in a letter to the commissioners dated August 21, 1794, says: "I have this day written to the governor and treasurer of Virginia, stimulating them to the payment of the *arrears of the donation*. Perhaps you had better add a representation of the necessity of the federal city for such a supply."

The foregoing history of the early legislation upon the subject clearly proves, in the judgment of the committee, that Virginia intended the said sum of $120,000 as a gift or donation, and not a loan because—

1. No time or manner of repayment is provided for.

2. The President of the United States had no authority to borrow money or contract for a loan. He was only authorized to accept grants of money.

3. The offer of Virginia of the said sum is conditional, provided the seat government was located near or within her territorial limits; and it was made after Pennsylvania and Baltimore had offered donations or gifts, and when there was a strong probability that Germantown would be agreed upon as the site. There is no reason to infer that Virginia would have advanced that or any other sum, if the seat of government had remained at Philadelphia, or had been located at Germantown.

4. General Washington calls it a "grant" when drawing his order on Virginia, and a "gift" when drawing on Maryland. The law of Maryland was the same as Virginia. Jefferson calls it at the time a "gift" in one letter, and a "donation" in another. The commissioners and others, when communicating with the authorities of Virginia, called it a "donation." It is designated as a "donation" on their books. Mr. Randolph, then Secretary of State, called it a "donation."

5. There is a presumption against the *legal right* to demand the said sum, arising from the lapse of time.

It has been urged that the particular phraseology used in the origi- proposition of Virginia, contained in the act of 10th December,

1789, implies an obligation upon the part of the United States to refund the money received. The words are, "Virginia will pass an act for *advancing* a sum of money not exceeding one hundred and twenty thousand dollars *to the use* of the general government," &c. The word "*advance*" to the use of another, does not always create an obligation to repay such advance; but, in this instance, the word must be considered in connexion with the other words used in the same connexion, "to be applied, in such manner as Congress may direct, *towards erecting public buildings*" in a particular place. The money advanced was so applied and the trust executed.

President Washington, it is true, asks, in a letter dated the 29th August, 1793, in "what manner it would be proper to state the accounts with the States of Virginia and Maryland, they having advanced moneys which have not been all expended on the objects for which they were appropriated." The commissioners, in their answer, say: "We have always been of opinion that the donation of loans from Virginia and Maryland, and other means, make but one aggregate, all equally liable to be disposed of for the necessary purposes of *surveying and other expenses of the city*, as well as erecting the public buildings, and have acted on that idea, and the accounts are so kept." On the 5th of September, 1793, he appointed two gentlemen to examine the accounts. From the reply of the commissioners, as well as from the report of the persons appointed to examine their accounts, it clearly appears that the object of President Washington's *quere* was to ascertain whether the funds received from Virginia and Maryland were applicable to the "*public buildings*," *strictly*, or to the general purposes of the commissioners in preparing for the reception of Congress at the new seat of government.

Congress having, on the said 16th of July, 1790, passed an act in compliance with the invitation of Virginia and Maryland, locating the seat of government on the banks of the Potomac, it became necessary for Virginia to pass another act, providing for the payment of the money. Accordingly, on the 24th of December, 1790, a bill was introduced into the House of Delegates "for *granting* to the President of the United States the sum of one hundred and twenty thousand dollars for erecting the buildings on the Potomac river, agreeably to the resolution of the last assembly." When the bill was passed, the title was amended by striking out the word "grant" and inserting "*advance*," and hence it is argued that Virginia did not intend to grant the money, but to loan it. No such inference is authorized by this circumstance. The word advance had been used in the original act, and it is presumed that the title of the bill was amended to make it conform thereto. Provision was only made for paying the money agreed to be advanced, and which the President was authorized to accept, and for a particular purpose.

It has also been urged that the assumption of the State debts by the federal government was brought about by connecting it with the question of the federal district, and that Virginia was greatly displeased with such assumption, and would not therefore have been very likely to have given money to erect buildings, &c. The fact is admitted; "secession" and "dissolution" were spoken of at that early day; a

"compromise" was restored to; those who desired the location of the seat of government on the banks of the Potomac were gratified; and those at the north, under the lead of Alexander Hamilton, obtained the funding system, and Pennsylvania lost the permanent seat of the federal government. It is true, Virginia was greatly displeased with the act funding the State debts, but Mr. Jefferson says that the "pill" was "sweetened" by a "concomitant measure," to wit: the location of the federal government on the banks of the Potomac. The following extract from Mr. Jefferson's "Memoirs and Correspondence," pages 448 and 449, volume 4, clearly proves how the business was managed. Mr. Jefferson says:

"The great and trying question, (the assumption of the State debts,) however, was lost in the House of Representatives. So high were the feuds excited by this subject, that, on its rejection, business was suspended. Congress met and adjourned from day to day without doing anything, parties being too much out of temper to do business together. The eastern members particularly, who, with Smith from South Carolina, were the principle gamblers in these scenes, threatened *secession and dissolution*. Hamilton was in despair. As I was going to the President's one day, I met him in the street. He walked me backwards and forwards before the President's door for half an hour. He painted pathetically the temper into which the legislature had been wrought; the disgust of those who were called the creditor States; the danger of the secession of their members, and the separation of the States. He observed that the members of the administration ought to act in concert; that though this question was not of my department, yet a common duty should make it a common concern; that the President was the centre on which all administrative questions ultimately rested, and that all of us should rally around him and support, with joint efforts, measures approved by him; and that the question having been lost by a small majority only, it was probable that an appeal from me to the judgment and discretion of some of my friends might effect a change in the vote, and the machine of government now suspended migh be again set in motion. I told him that I was really a stranger to the whole subject; that not having yet informed myself of the system of finance adopted, I knew not how far this was a necessary sequence; that undoubtedly, if its rejection endangered a dissolution of our Union at this incipient stage, I should deem that the most unfortunate of all consequences, to avert which, all partial and temporary evils should be yielded. I proposed to him, however, to dine with me the next day and I would invite another friend or two, bring them in conference together, and I thought it impossible that reasonable men, consulting together cooly, could fail, by some *mutual sacrifices of opinion, to form a compromise* which was to save the Union. The discussion took place. I could take no part in it but an exhortary one, because I was a stranger to the circumstances which should govern it. But it was finally agreed to, that whatever importance had been attached to the rejection of this proposition, the preservation of the Union and of concord among the States was more important, and that therefore it would be better that the vote of rejection should be rescinded, to effect which, some members should change their votes. But it was observed that this pill would be peculiarly bitter to the southern States, and that *some*

concomitant measure should be adopted to sweeten it a little to them. There had before been a proposition to fix the seat of government either at Philadelphia or at Georgetown, on the Potomac; and it was thought that by giving it to Philadelphia for ten years, and to Georgetown permanently afterwards, this might, as an anodyne, calm in some degree the ferment which might be excited by the other measure alone. So two of the Potomac members (White and Lee, but White with a revulsion of stomach almost convulsive) agreed to change their votes, and Hamilton undertook to carry the other point. In doing this, the influence he had established over the eastern members, with the agency of Robert Morris, with those of the middle States, effected his side of the agreement, and so the assumption was passed."

The following extracts from the speeches of members of Congress, in the debate upon the final passage of the bill locating the seat of the federal government where it now is, clearly show the views and understanding of those who passed the law. To ascertain what answer the law makers would give to a question of construction, is always a good way to get at the intention of a law:

[Annals of Congress, volume 2, pages 1718 to 1731.]

Mr. Lee, of Virginia, remarked: That while the present position continued to be the seat of government, the agriculture of the States to the eastward is invigorated and encouraged; while that to the southward is languishing and expiring. He then showed the fatal tendency of this preponderating encouragement to those parts of the country already considered as the strongest parts of the Union; and from the natural operation of these principles he inferred that the interest of the southern States must be eventually swallowed up. The decision of the Senate (said he) affords a most favorable opportunity to manifest the magnanimity of soul which shall embrace, upon an extensive liberal system, the best interests of the great whole. This cannot be done while the present unequal situation of the seat of government of the United States continues. Nations have their passions as well as individuals. He drew an alarming picture of the consequences to be apprehended from *disunion*, ambition, and rivalship. He then gave a pleasing sketch of the happy effects to be derived from a national, generous, and equal attention to the southern and northern interests. Will gentlemen, said he, blast this prospect by rejecting this bill? I trust they will not.

"It is true," said Mr. Lee, "that the citizens of this place (New York) have put themselves to great expense to accommodate the government, and are entitled to much praise for their exertions; but he wished to take up the subject upon national grounds," &c.

"He then moved that the papers received from the executive of Virginia be read, which was done." [It is presumed the papers alluded to were the resolutions of Virginia, offering money and land.]

Mr. Burke, of South Carolina, said: It was unjust to the people of New York to remove from that city till the expense they had incurred was repaid to them. It was a breach of honesty and justice. It was injustice to the State—to the whole nation. He entered into a consideration of their sacrifices and services. He spoke in handsome

terms of Pennsylvania; but he was afraid of their influence, and thought if they obtained the temporary seat of government, it could never be removed from Philadelphia.

Mr. Madison remarked: "Sir, we should calculate on accepting the bill as it now stands; we ought not to risk it by making any amendments. We have it now in our power to procure a southern position; the opportunity may not again speedily present itself. We know the various and jealous interests that exist on this subject. We should hazard nothing. If the Potomac is struck out, are you sure of getting Baltimore? May no other places be proposed? Instead of Baltimore, is it not probable we may have Susquehanna inserted—perhaps the Delaware? Make any amendment, sir, and the bill will go back to the Senate. Are we sure it will come into our possession again? By amending we give up a certainty for an uncertainty. In my opinion we shall act wisely if we accept the bill as it now stands; and I beg leave to press it on gentlemen not to accept of any alteration, lest it be wholly defeated and the prospect of obtaining a southern position vanish forever."

Mr. White, of Virginia: "After the present ferment is subsided, this position [on the Potomac] will be *considered as a permanent bond of Union:* and the eastern States will find their most essential interests promoted by the measure." He adverted to the trade of Massachusetts; which, he said, was greater to Virginia than to the whole Union besides: "the southern States would be cordial in promoting their shipping and advancing their interests, when they observe that the principles of justice influence them on this great national question."

In view of the foregoing history, facts, and considerations, the committee conclude and decide, that if the United States could be sued, the claimants could not recover, either in a court of law or equity.

The question then arises, whether, considering the sum advanced to be a "gift" or "donation," it should be repaid. As such its repayment is not asked, and therefore the committee do not undertake to decide the question, but refer it to the judgment of the Senate.

The committee, however, are unanimously of opinion, that if, looking to all the circumstances of the advance made by Virginia, and viewing it as a "donation" or "grant," the Senate should determine that it is just and proper to repay the same, then the sum of $72,000 advanced by Maryland should also be repaid, and a reasonable compensation made to the States of New York and Pennsylvania for the use of their public buildings by Congress and the public officers, prior to the removal of the seat of government to Washington.

The records show that Congress and the public officers occupied the public buildings fitted up by, and belonging to, the State or city of New York, for a period of about one year and six months, and the public buildings in Philadelphia, then belonging to the State of Pennsylvania, from the 6th of December, 1790, to about the close of the year 1800, a period of about ten years. It is believed that $20,000 would be a reasonable compensation to be offered to New York, and $100,000 to the State of Pennsylvania. It does not appear that either State ever received any thing more than thanks. At that time the

government was poor and burdened with the immense debt of the revolution.

The committee therefore submit the following resolution:

Resolved, That the committee be discharged from the further consideration of the subject.

IN SENATE—*May* 29, 1850.

The Committee of Claims, to whom was referred the petition of the president and directors of the Orange and Alexandria Railroad Company, in the State of Virginia, with the documents which accompany it, have, according to order, had the same under consideration, and submit the following report:

The prayer of the petition is for the payment to the company of the sum of one hundred and twenty thousand dollars, with such interest thereon as may be properly due, in return of that sum of money advanced by the State of Virginia to the use of the United States, under authority of an act of assembly, passed in that commonwealth the 27th day of December, 1790. To maintain the right of this company to the said claim, the president and directors have exhibited an authenticated copy of a joint resolution of the two houses of the legislature of Virginia, adopted the 15th of March, 1850. By the terms of this act of the said legistature, the claim of that commonwealth against the government of the United States, for the sum of one hundred and twenty thousand dollars, advanced to the United States by an act of assembly of the 27th of December, 1790, is transferred to the Orange and Alexandria Railroad Company, with power to demand and receive the same, and the interest thereon; and the same joint resolution unites to this transfer an obligation on the said company to issue stock for the amount thereof to the use of the primary schools of Virginia.

The validity of this assignment by Virginia depends on the right of that State to demand the payment of this claim; and whatever respect may be due to the assertion of such a right in one of the States of this Union, the committee felt it to be their duty to investigate the claim thus asserted by Virginia, and to lay before the Senate the result of such investigation.

It is shown by an act of assembly, passed in Virginia the 3d day of December, 1789, (see 13 vol. Henning, page 33,) that the establishment of a "situation for the seat of the general government, central and convenient to the citizens of the United States at large, having due regard to population, extent of territory, and a free navigation to the Atlantic ocean through the Chesapeake bay, as well as ready communication with our fellow citizens in the western frontier," engaged the attention of the said general assembly. And following this preamble, (which pointed to the practicability of embracing within the seat of the general government portions of the territory of Pennsylvania, Maryland, and Virginia,) it was enacted "that a tract of country, not exceeding ten miles square, or any lesser quantity, to be located within the limits of that State, at the pleasure of Congress, be, and the same is hereby, forever ceded and relinquished to the Con-

gress and government of the United States, in full and absolute right and exclusive jurisdiction, &c., pursuant to the eighth section of the first article of the Constitution."

And on the 10th day of December, 1789, it was—

"*Resolved, by the general assembly of Virginia*, That a copy of the foregoing act, of the 3d of December, 1789, be transmitted to the general assembly of Maryland without delay; and that it be proposed to the said assembly to unite with this legislature in an application to Congress, that in case Congress shall deem it expedient to establish the permanent seat of government of the United States on the banks of the Potomac, so as to include the cession of either State, or a part of the cession of both States, this assembly will pass an act for advancing a sum of money, not exceeding $120,000, to the use of the general government, to be applied in such manner as Congress shall direct towards erecting public buildings, the said assembly of Maryland on their part advancing a sum not less than two fifths of the sum advanced by this State for the like purpose."—(See journal of the house of delegates, page 115.)

A further resolution was then adopted to procure and forward to Congress information of the navigation of the Potomac river above and below tide-water, and the practicability of communicating with the western waters, &c.—(See same journal and page.)

It does not appear that these propositions were acted upon by Congress, or referred to in the debates of the House of Representatives on the passage of the law of July 16, 1790, "for establishing the temporary and permanent seat of the government of the United States," (which act may be found in 1st vol. Laws United States, page 130.) That law located the permanent seat of the government within the State of Maryland, and comprise within the District of Columbia no part of the territory of Virginia. Its 4th section enacts, "that for defraying the expenses of such purchase, and building, the President of the United States be authorized and requested to accept grants of money."

The journals of the house of delegates for the State of Virginia show, that on the 24th day of December, 1790, (see page 155,) a bill was introduced "for granting to the President of the United States the sum of $120,000 for erecting public buildings on the Potomac river, agreeably to a resolution of the last assembly." That this bill, with this title, passed the usual parliamentary forms of proceeding; that on the 27th of December, 1790, (see page 161,) it passed, and that its title on its passage was amended by substituting for the words quoted above the following: "An act concerning an advance of money to the government of the United States for public buildings." And in a report of the committee of the legislature of Virginia on this subject, at its last session, and with which the transfer of this claim to the Orange and Alexandria railroad is identified, it is declared that "it is not allowed us to doubt the intention of this change, when the legislature thus refused to make the $120,000 a *grant*, and adhered to the promise that it should be an advance."

The same report further declares, that the location of the permanent seat of the federal government was associated in its passage with

another act of Congress, which excited the displeasure of Virginia as a breach of the federal Constitution. This measure was the assumpsit of $21,500,000 of State debts; and the same journal of the house of delegates and other records show this dissatisfaction to have been vehemently expressed by Virginia through her legislature, on the 23d day of December, 1790, (see 13 Henning, page 237;) and the report concludes on this point with these words: "With the association in these respects which twined about the location of the federal district, it is not rationally to be inferred that Virginia would have extended an ill-timed generosity, thus identified with the first breach of the federal Constitution. It was yet due to her own honor, and to that fidelity which has always distinguished her obligations, that she would not recede from her promise in the resolve of the general assembly of the 10th of December, 1789." "The journals of the house of delegates for the time in which that act was on its passage, clearly show that the State adhered to its purpose of making the '*advance*,' and refuse to make it '*a grant*.'"

In support of this position it has been alleged, both by the report aforesaid and the petitioners, that the old Congress, as far back as December 23, 1784, (see volume 4, Gideon's edition of Journals of Congress, page 458,) had, by ordinance for that purpose, decided on the establishment of the seat of government near the lower falls of the Delaware river, and that the same resolution ordered contracts to be made for erecting the needful edifices, in an elegant manner, by commissioners appointed for that purpose; and that this location, and the public buildings contemplated by it, failed to be erected, because of the want of funds required for that purpose. It appears to your committee, by the historical evidence of Marshall's Life of Washington, that Congress failed to appropriate money to carry into effect the resolve of 1784.—(See volume 5, pages 258, 259.) Virginia urges that she offered to advance this money to the use of the government of the United States, to avoid a like failure. In confirmation of this intention to advance or lend, and not to grant or give this money, it has been urged, in behalf of Virginia, that an offer was made by the General Assembly, on June 28, 1783, (see page 97, journal house of delegates,) in these words: "That if the honorable Congress should esteem the city of Williamsburg, in this State, a fit place for their session, the assembly will *present* them, on their removal thereto, and during their continuance therein, with the palace, the capitol, and all public buildings, and three hundred acres of land adjoining the said city, together with a sum of money not exceeding one hundred thousand pounds, this State's currency," &c. This series of resolutions has the following proviso: "Provided always, that should Congress thereafter remove from the city of Williamsburg, or from the lands before mentioned, that in such case the lands so ceded, with the buildings, shall revert to the commonwealth."

Thus showing that when Virginia intended a *present*, she so expressed herself; and that where her intention was only to *advance money to the use of the government of the United States*, she was also explicit in the language she employed. Reference was also made to

other cases to show the meaning attached by Virginia and other States to the words "advanced to the use of the United States."

Among the documents filed with the petition are two letters of General Washington, while President of the United States, which are shown to be all in the State Department that relate to the public buildings, and only one of these has any notice of the claim now under consideration. That letter is addressed "to the commissioners of the federal district," written from Philadelphia, under date of August 29, 1793, and has this passage in it: "In what manner would it be proper to state the account with the States of Virginia and Maryland, they having advanced money which has not been all expended on the objects for which it was appropriated?" From this clause the petitioners infer that General Washington regarded the money as an *advance*, rendering necessary an account of it to be kept with those States. They claim the benefit of the further inference, "that this advance was not all of it used for the objects for which it was appropriated," and that it was applied to other uses of the government.

It is proper here to state, that an extract from the account of the Commissioners of Public Buildings, furnished from the office of the Register of the Treasury, shows that the sum of forty thousand nine hundred and ninety-nine dollars and ninety-five cents was received by the Commissioners of Public Buildings from Virginia, between September 17, 1794, and June 1, 1802, and it is entered "account of moneys received," and the several sums so received are stated as donations; and this is all that appears on the treasury books (as the register states) in relation to this subject. The records of the treasury department of Virginia show, by certified copies, that the first payment of this advance to the United States was made April 15, 1791, and the last on January 8, 1795, and making in the whole the sum of one hundred and twenty thousand dollars. It may have been that the sum of $40,999 95, part of this $120,000, was all that was used by the Commissioners of the Public Buildings. If so, it accounts for the statement made in General Washington's letter of the 29th of August, 1793, that the money advanced by Virginia and Maryland "was not all expended on the objects for which it was appropriated."

It is also proper to state, that although the first act of Congress for establishing the temporary and permanent seat of the government of the United States did not include within the federal district any part of the territory of Virginia, a supplemental act of Congress was passed the 3d of March, 1791, (see 1st vol. Laws United States, page 214,) extending that district into Virginia, and embracing as part thereof the town of Alexandria. The first advance by Virginia was made on the 15th of April, 1791, a few days after the passage of this supplemental act of Congress.

The return of this money was never demanded by Virginia until the present session of Congress, nor in any other manner than by the present petition. By the act retroceding that part of the District of Columbia south of the Potomac to Virginia, the United States retained the custom-house and post office, and expressly provided, as the condition of the said cession, that it should never be liable for the debt of the corporation of Alexandria.

The railroad to which this claim has been transferred by the commonwealth of Virginia, extends from the city of Alexandria to Gordonsville, and would form a connecting link in the line of railroad communication from Boston to New Orleans.

The foregoing is a presentation of the facts relating to this claim, and of the arguments by which it has been urged before the committee; the members of which have deemed it most proper to submit the same, and ask the instructions of the Senate upon the subject.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 233.

IN THE SENATE OF THE UNITED STATES.

JULY 21, 1856.—Submitted and ordered to be printed.

Mr. FESSENDEN made the following

REPORT.

The Committee on Patents and the Patent Office, to whom was referred the application for the extension of the patent for a planing machine granted to Uri Emmons, report:

That the original patent was granted on the 25th of April, 1829. A patent for a planing machine of a similar character had been previously granted to William Woodworth on the 27th December, 1828. A controversy arising between the parties, it was adjusted by an agreement, by which the territory of the United States was divided between them. The machine known as Woodworth's combined all the essentially important characteristics of both patents.

Woodworth's patent was extended for seven years, under the act of 1836. Emmons failed to procure an extension, though there would seem to have been no good reason for refusing such extension. In 1845, the administrator of Woodworth procured another extension for seven years, by act of Congress. Emmons, however, had no benefit from the extension of Woodworth's patent.

What is known as Woodworth's machine, embracing all the valuable principles of both inventions, has been protected for nearly twenty-eight years, and will become public property on the 27th of December, 1856.

The Committee of the Senate on Patents and the Patent Office for the last Congress, being of the opinion that as Emmons was, at least, equally deserving with Woodworth, reported a bill granting him an extension to December 27, 1856, the day when Woodworth's last extension will expire. That bill did not pass, and it is manifest that such a extension now would be of no service to the petitioners. They ask an extension for seven years from that period.

Your committee are of opinion that the prayer of the petitioners ought not to be granted. The machine will, at that time, have enjoyed protection for twenty-eight years. And however it may be regretted that Emmons may have failed to receive a proper share of the benefit, it will be unjust longer to withhold his invention from the public. Such an extension as that applied for would impose great burdens on the community, and your committee see no sufficient grounds for imposing them for the benefit of the petitioners. They therefore report adversely.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 234.

IN THE SENATE OF THE UNITED STATES.

JULY 21, 1856.—Ordered to be printed.

Mr. FESSENDEN made the following

REPORT.

[To accompany Bill S. 396.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Nathan Scholfield for the renewal of a patent granted to him on the 17*th of May*, 1836, *report:*

That, on said 17th of May, 1836, said Nathan Scholfield obtained a patent for an important improvement in a machine to regulate the motion of water wheels; and at the expiration of his original term of fourteen years, on proof that he had obtained no adequate remuneration, he obtained an extension, which will expire on the 17th day of May, 1857. He prays for a further extension of seven years from and after that day, on the ground that he has not been sufficiently remunerated for his invention.

Your committee are satisfied that his improvement is a valuable one, and that he is but just beginning to realize a reward for his labor and skill—owing, probably, to the nature of his improvements, which required time to perfect, and render them efficient, and not to any fault on his part. Believing that the public will not be injured by granting him a further extension, your committee therefore recommend the passage of a bill granting to Mr. Scholfield a further extension for seven years from and after the 17th day of May, 1857, which bill is werewith submitted.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 235.

IN THE SENATE OF THE UNITED STATES.

JULY 21, 1856.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany Bill H. R. 226.]

The Committee on Private Land Claims, to which was referred House Bill No. 226, "An act to authorize the legal representatives of Pascal L. Cerré to enter certain lands in the State of Missouri," have had the same under consideration, and submit the following report:

The committee attach hereto, and make a part of this report, the report from the House Committee on Private Land Claims, submitted by Mr. Porter, on the 3d day of April, 1856, which is as follows:

That it appears from the evidence submitted to your committee with the petition, together with that procured by your committee from the General Land Office, that the proper Spanish authorities of Louisiana, in due form, made a concession to said Pascal Leon Cerré of 7,056 arpens of land, on the 9th of November, 1799, to be located in the then Territory of Louisiana, now State of Missouri. That the recorder of land titles of Missouri, and the two commissioners associated with him under the provisions of the act of Congress "for the final adjustment of land claims in Missouri," approved July 9, 1832—the recorder and commissioners constituting a board of commissioners, as required by said act—reported in favor of said claim, and the same was confirmed to the claimants by the act of Congress of July 4, 1836, entitled "An act for confirming claims to lands in the State of Missouri, and for other purposes." It further appears by the evidence before your committee, that said claim of Pascal Leon Cerré for 7,056 arpens was entered as number two in the first class of the decisions of said "board of commissioners," (see document No. 59, House of Representatives, first session, twenty-fourth Congress, pages 29, 30, and 31,) to be surveyed in two parts or halves, the first one at the "Big Spring" of the river Maramec, and the second half at the fall of the forks of Gasconade and those of the Maramec called "the Muddy." For the act of confirmation of said claim, see United States Statutes at Large, volume 5, page 126, chapter 361.

The first part of the claim has been described as survey No. 3,120 for 3,001.25 acres, equal to 3,528 arpens, situate in townships 37 and 38 north, of range 6 west, of township 38 north, of range 5 west;

and with this survey are found certain valid conflicting entries for which the second section of said confirmatory act provided an indemnity in other lands subject to entry at private sale. It appears, however, from evidence obtained from said General Land Office, that the remaining part of said claim of 7,056 arpens cannot be located, and that no relief can be granted in the premises without congressional interposition. The committee consider that the petitioners are entitled to the relief they pray for, viz: the privilege of locating the unsatisfied portion of their said confirmed claim; for which purpose they report a bill and recommend its passage.

The committee, whilst they agree with the statement of facts and the conclusions set forth in the report, are of opinion that the bill does not sufficiently protect the interests of the government in giving relief to the legal representatives.

The confirmatory act of July 4, 1836, provided that if the tract or tracts confirmed by said act or any part thereof had been previously located by any other person, under any law of the United States, or had been surveyed and sold by the United States, that in such case the confirmee was authorized to locate a quantity of land equal to that of which he was deprived by such prior location or sale. Thus, under said act, relief could have been obtained by the legal representatives of Pascal L. Cerré to the extent of the conflicting entries prior to the date of said act in survey No. 3,120. And again, such legal representatives may be in possession of a part of the lands covered by such survey, under and by virtue of the original concession, the said confirmatory act, and the survey. To protect the interests of the government, therefore, the committee submit the accompanying amendment to the bill, in which they ask the concurrence of the Senate.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 236.

IN THE SENATE OF THE UNITED STATES.

JULY 22, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. ALLEN made the following

REPORT:

On the 26th of June, the Senate of the United States ordered that the Committee on Agriculture be directed to enquire into the expediency of making a specific appropriation for the importation of seed sugar cane for gratuitous distribution to the sugar planters of the United States—

The Committee on Agriculture regard the culture of the sugar cane of great importance to the country, and it is entitled to the protection and assistance of Congress.

From the first introduction of the sugar cane into the West India islands it has been cultivated by planting a part of the cane of the growth of the preceding year, and occasionally a change of the plant, by importing it from other places, particularly in procuring the cane for planting from those countries near the equator, where the cane is produced in the greatest perfection.

One remarkable fact relating to the culture of the sugar cane is, it has never been produced on the continent of America from seed.

It is only in China that the cane is cultivated by sowing.

Under the direction of the Department of Agriculture in the Patent Office, the seed of the sugar cane has been imported from that distant country into the United States and distributed for planting.

The French government have also distributed the seed of the China cane in the south of France; the results of the experiments in France and in the United States cannot be known in less than two or three years, as it will require more than one season to form a correct opinion of any advantages to be derived from the planting the seed from China.

The sugar cane, also wheat, potatoes, and many plants now cultivated in the United States, are not indigenous to the country, and to have a good production it is necessary to change the seeds of various districts, and not to plant from year to year the same seeds or plants on the same soil.

The committee recommend an appropriation of ($15,000) fifteen thousand dollars be made by Congress for the importation of sugar cane for planting, under the direction of the Department of the Interior, having the charge of the distribution of plants and seeds.

Accompanying this report are two letters, one from the Hon. Secre-

tary of the Navy, and one from D. J. Browne, esq., of the Patent Office, addressed to the honorable John Slidell, United States Senate, which letters will make a part of this report.

NAVY DEPARTMENT, *June* 24, 1856.

SIR: I have the honor to acknowledge the receipt of your communication of the 12th instant, in which you advise me of the serious apprehensions entertained by many sugar planters in Louisiana of the deterioration of the cane now planted, and make the suggestion that possibly our ships of war might, without inconvenience or detriment to the public service, render essential aid to this important branch of agricultural industry.

Be assured, sir, that I partake of the interest you manifest in contributing in every proper way to the advancement of this branch of agricultural pursuit.

The naval squadrons can, without the slightest prejudice to the usually prescribed duties, aid agriculture much in acquiring practical information and bringing to their own country plants and seeds easily procured in their cruises, which now extend over a large part of the globe.

Specimens of the sugar cane have in one or two instances, to my knowledge, been brought home in our national vessels, but, unfortunately, on examination it was found that the cane was not sufficiently protected and cared for during a long voyage through varying climates to preserve it.

I propose during the present week to issue instructions to the commandants at certain foreign stations to make exertion to procure specimens of the cane, with proper directions for preserving them from injury during the voyage.

I am, sir, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. JOHN SLIDELL,
United States Senate.

UNITED STATES PATENT OFFICE, *June* 17, 1856.

DEAR SIR: In answer to your inquiries relative to the best mode of introducing a fresh supply of the cuttings of sugar cane into the southern portion of the United States, I would reply that I know of no more feasible and expeditious way than bringing them from Brazil, British Guiana, or the Spanish main, in some of our vessels of war which may be returning from that coast, procured, packed, and imported directly under the supervision of a suitable person, who should be properly instructed on the subject before he leaves this country. The points the most accessible and where the cane grows in the greatest perfection are Bahai, Demerara, and Laguira. Due regard should be

paid to the period of growth of the cuttings, the parts of the plants from which they are taken, and the season and places at which they are to arrive in the States.

In reference to the mode of packing, the cuttings may be brought in a growing condition in "wardian" cases, or they may be put up in moistened moss, in tin cases, hermetically soldered or sealed. As to the mode of thus packing them it could not be well described by written instructions, and therefore can only be explained in person by one practically acquainted with the business.

I think there would be no advantage gained by attempting to introduce the cuttings from India, or any of the adjacent countries or isles, as I understand that the canes of those regions in general are quite as defective or diseased as on this continent, which has been attributed to continued propagation from cuttings taken from near the roots of the plants, and an annual succession of crops from the same land. I fear that such has been the cause to some extent of the failure of the crops of our southern States. The evil can only be remedied by fresh supplies of healthy cuttings and due regard paid to rotation and a judicious application of suitable manures.

Should it be required of Congress to import the quantity of canes as you propose, it will afford me pleasure at any time to give this subject any personal attention in my power.

I am, dear sir, very respectfully, your obedient servant,

D. JAY BROWNE.

Hon. JOHN SLIDELL, *of Louisiana,*
United States Senate.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 237.

IN THE SENATE OF THE UNITED STATES.

JULY 22, 1856.—Submitted and ordered to be printed.

Mr. BELL, of Tennessee, made the following

REPORT:

The Committee on Naval Affairs, to whom was referred the memorial of Washington A. Bartlett, late a lieutenant in the navy of the United States, beg leave to submit the following report:

Mr. Bartlett complains that, by the action of the Executive, based upon the recommendation of the Board of Naval Officers, convened under the provisions of the law of the 28th February, 1855, entitled "An act to promote the efficiency of the navy," he was stricken from the rolls of the navy. He alleges that the action of the Board and the Executive was illegal and unjust, and prays that he be restored to his commission and original position in the navy. Your committee having already made a full and elaborate report, embodying their views of the scope and policy of the law of 28th February, 1855, and the manner in which it has been carried out, will not now repeat them, but will confine themselves to a simple recapitulation of the facts deposed to, or stated by, the witnesses who have either appeared before them personally, or whose statements have, at the request of the memorialist, been received as valid testimony.

In order to present the case free from all unnecessary embarrassment, it is admitted that so far as intelligence, physical capacity, temperate habits, a fair degree of professional acquirement and skill, and attention to duty are concerned, Mr. Bartlett was, at the time of his being stricken from the rolls of the navy, an efficient officer, and, if free from just imputations of moral delinquency, should have been retained on the active list.

Although in the first instance the investigations of the committee took a somewhat wider range, they have decided to confine themselves to three distinct charges:

1st. The illicit landing and sale at Monterey of a shawl.

2d. The landing free from duty and sale at San Francisco of a quantity of merchandise, on the pretence that it was intended for the use of the crew of the United States schooner Ewing, then under his command.

3d. Fraudulent and dishonest conduct in the discharge of duties voluntarily assumed as caterer of the ward-room mess of the United States ship Portsmouth.

As to the first charge, Purser James H. Watmough deposed that he "served on board the Portsmouth with Bartlett. Bartlett sold a shawl in Monterey to a lady on shore. Said shawl cost Bartlett seven dollars. The lady told him she gave ten dollars for it. He saw the shawl on the lady's shoulders, and at once identified it. Knew the shawl, because he had wanted to purchase it of Bartlett. Informed Lieutenant Missroon of the affair. Bartlett was compelled to take the shawl back. Thinks that Dr. Duval and himself made the lady a present of another shawl, that she might lose nothing by her transaction with Bartlett." On cross-examination witness stated that "the lady told witness she gave ten dollars for the shawl. Did not say that Bartlett's shawl was smuggled. The shawl was taken on shore by Dr. Duval and witness and presented to said lady; was taken on shore by permission of the collector. Bartlett was not present when the lady told him she had bought it of Bartlett. Bartlett here said that he had given the shawl to the lady, and that aftewards her husband had presented him with a horse worth about ten dollars."

Commander J. S. Missroon deposed: "That in the case of selling an article of dress to a lady in Monterey, Purser Watmough informed me of the facts substantially, as specified in my letter of October 16, 1846, adding that he had received the information from the lady in question. When questioned by me on the subject, Mr. Bartlett did not deny having sold the article to the lady, nor did he deny the price which it was said he had received for it. But he endeavored to excuse the sale by stating that he did not want it, that it required attention to preserve it, and that the lady desired to possess it. He did not deny having smuggled it to the shore, when I remarked that he was open to the charge of having smuggled the article under his uniform into a foreign country; nor did he reply to my comments upon the exorbitant advance he had received upon its cost, which I happened to be aware of. He appeared to be much affected by the detection, and expressed the hope that no further notice should be taken of the matter."

Your committee, had this matter stood alone, would not have considered it as sufficiently serious to compromit the character of Mr. Bartlett to a degree that would affect his efficiency, nor would they, even when connected with other charges, have given much weight to it, had he not, in taking the shawl back, recognized the impropriety of the transaction.

As to the second charge, Lieutenant Simms deposed: "That he served with Bartlett on Pacific coast. Left New York in United States schooner Ewing, as passed midshipman. Bartlett was executive officer of the Ewing when she left the United States. Was on board of the Ewing two years. The Ewing was commanded part of the time by Bartlett and part by Lieutenant McArthur. In conversation, the charge was that Bartlett had passed goods through the custom-house. Heard Bartlett say that the clothing he had was worth $750, taken on board the John G. Costar at Valparaiso, and landed at San Francisco. Bartlett said Harrison, custom-house officer, had passed them for the use of the vessel. Witness was attached to the vessel. The goods did not go on board, this was a matter of public notoriety on

shore. It was in the year 1849. Witness received a letter from Bartlett saying he had been accused of using schooner Ewing for smuggling purposes. Witness afterwards met him and said he knew nothing personally about it. Bartlett said he had seen Harrison and had told him the goods were for the use of the vessel, and Harrison had charged nothing for passing them."

A. C. Rhind, who was a passed midshipman and acting executive officer of the Ewing, introduced as a witness by Bartlett, deposed:

"On one occasion, I had been on shore in San Francisco on duty. On my return on board, I missed one of the boats and crew. I inquired of the officer of the deck where the boat was, and understood that she had been sent by Mr. Bartlett on board of another vessel to assist in breaking out some articles. The boat returned shortly after, and, as I understood, without having accomplished the desired object, either from the absence of the captain or the person who was to attend to the delivery of the goods. I objected to the boats being sent on such duty, because I did not consider it as appertaining exclusively to the service of the vessel. Whether I stated my objections particularly to Mr. Bartlett, I do not recollect, but they were expressed to the officers generally, and, I think, to Mr. Bartlett personally. The boat was never, to my knowledge, sent back, nor did the crew ever perform any such service, so far as I know. My position there was such that I never would have permitted any such infractions of the requirements of the service, and none such ever occurred. This had almost entirely escaped my recollection, but was recently recalled to my mind by a conversation had (I think, in February last) with Lieutenant C. Simms, one of the officers of the vessel. The name of the vessel to which the boat was sent was John G. Costar, last from Valparaiso, I think."

James W. Bingham, a witness introduced by Mr. Bartlett, deposed that "he was a member of the firm of Bingham, Reynolds, Bartlett & Co., of San Francisco. That said firm received from ship John G. Costar an invoice of clothing, shipped from Valparaiso, which was sold for account of Bartlett, and proceeds paid him. Remembers the fact of receiving and making sale of the goods. That said goods were regularly entered and cleared at custom-house in San Francisco, and were received from said ship John G. Costar by custom-house permit, as required by law. He was Bartlett's partner; for nearly three years associated with him in business in San Francisco. On cross-examination, he said the goods were boots, shoes, and sailors' clothing. They were imported from Valparaiso on Mr. Bartlett's individual account. We sold them and passed the amount to his credit, charging him commissions as we would any stranger. We had nothing to do with the goods but to receive them. This was the only instance I ever knew when Bartlett imported goods on his own account. The value of the goods was between seven and eight hundred dollars. The duties on them were not paid, according to the best of my recollection. They were entered as being intended for the United States seamen, and therefore free."

Mr. Bartlett, at page 23 of his printed statement addressed to this committee, states: "While at Valparaiso I purchased from the United States naval agency $728 25 worth of British sample clothing, (sea-

men's, and especially suited for surveying service,) equal to only one suit per man. My object in doing so was to have the means within my own control of supplying the crew with clothing suitable to their work at a low price. We had learned that clothing had, with every thing else, reached almost fabulous prices at San Francisco. These goods were shipped on board of the John G. Costar, and not on board of the Ewing. When they arrived at San Francisco, they were regularly passed through the custom-house, as will appear by the following affidavits." Then follow the affidavits of James W. Bingham, and of E. H. Harrison, who was then the collector of San Francisco:

The undersigned, James W. Bingham, of the city of New York, being duly sworn, deposeth and saith, that he was a member of the firm of Bingham, Reynolds, Bartlett & Co., of San Francisco, and resident there from August, 1849, until October, 1851. That said firm received from ship John G. Costar an invoice of clothing, shipped from Valparaiso, which was sold for account of W. A. Bartlett, and proceeds paid him. Deponent has not now before him the books of said firm, which are in San Francisco, but can be produced or referred to within sixty days, if required for verification of deponent's state-sales of goods before mentioned. The said goods were regularly ment. That deponent remembers the fact of receiving and making entered and cleared at custom-house in San Francisco, as deponent firmly believes, and were received from said ship John G. Costar by custom-house permit, as required by law.

JAS. W. BINGHAM.

STATE OF NEW YORK,
City and County of New York, } *ss.*

On this 17th day of April, one thousand eight hundred and fifty-six, before me a notary public, duly commissioned and sworn, personally appeared James W. Bingham, and to me known to be the subscriber to the foregoing statment, and made oath that the same is true and correct, to the best of his information and belief.

[L. S.] Witness my hand and official seal, the day and year above written.

JOHN DRAKE.

PHILADELPHIA, *April* 7, 1856.

The undersigned, formerly the United States collector in and for the port and district of San Francisco, Territory of California, and so acting in the year A. D. 1849, and to the month of October 1849, when relieved by Col. J. Collier, esq., his legal successor, hereby states, for the benefit of W. A. Bartlett, esq., late of the navy, and for any use the said Bartlett may desire to make of this paper, that it was the practice of the custom-house at San Francisco, at the period referred to, viz: 1849, to demand of the master of every merchant vessel entering the port of San Francisco a full and complete sworn manifest

of the entire cargo, whether taken on board at the commencement of the voyage, or at any port on the route, and that immediately the vessel entered the port, (and even before said manifest was due at the custom-house,) and before her hatches could be opened and any article could be landed, a sworn "visitor" and "inspector" was placed on board, and the hatches were locked or secured by custom-house seals, and that when the hatches were opened they were so opened under the charge of said sworn inspector, and that no article or package of the cargo could be landed from the ship until a regular "permit" was handed to the inspector, signed by the collector or one of his deputies, or the permit clerk, under the usual forms and guards of the office.

And the undersigned further says, that such permit, which was the only legal proof to the inspector that he had authority to land packages, would, on his receipt of it and consequent delivery of the packages enumerated upon it revert to the custom-house, as the inspector's voucher of delivery; and would there remain with and share the fate of the archives of the custom-house.

And the undersigned further says, that while he cannot recall, from personal recollection, the circumstances of the importation of clothing, which Mr. Bartlett admits he imported into San Francisco, from Valparaiso, in 1849, in the ship John G. Costar, the undersigned does not doubt that on the receipt of an application, whether verbal or in writing, to permit the articles referred to to be landed, whether they were to be entered for duty or free, or whether the question of duties remained to be decided, that either the undersigned or his deputy did give, either to Mr. Bartlett or some authorized agent of his, a full permit to enter the clothing, or else such agent could not have gotten possession of them, either from the master of the ship or the inspector of customs. And the undersigned has no reason to suppose that Mr. Bartlett, the master of the John G. Costar, or the inspector of customs, or either of them, combined to evade the laws of the customs, in a matter of such trifling importance or in any other case; and which, in this case, must have involved the ship and cargo, in which, it is not supposed, that Mr. Barlett had any interest.

The undersigned does not see in this transaction alluded to anything to implicate Mr. Bartlett, or to attach to him a charge of smuggling. It is evident that he applied to the proper authority to have the articles landed and placed under his control. And the question of duties or no duties was, under the circumstances of the customs in California, a question the undersigned could fully decide for himself and *the public service;* and that the undersigned did decide the matter in such manner as the circumstances called for there can be no doubt.

And the undersigned further says, that at no period during the time of his administration of the customs at San Francisco was any charge ever laid, or attempted to be laid, before him, of any attempt, intention, or act of smuggling, on the part of Lieut. Bartlett, then commanding the United States Schooner "Ewing," or subsequently to his being relieved of that command.

And the undersigned declares that Lieut. Bartlett enjoyed a high

reputation in San Francisco for honor, probity, and attention to his duties, in all his official and private relations, and that among his acquaintances, and they were extensive in that population, this officer stood high in their esteem and respect. And the undersigned knows of nothing which should discredit Lieut. Bartlett as a public officer and gentleman.

E. H. HARRISON.

STATE OF PENNSYLVANIA, } ss.
City of Philadelphia,

Be it known that, on the day of the date hereof, before me, Edward Wilcox, notary public for the commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in Philadelphia, personally appeared the before named E. H. Harrison, and acknowledged the foregoing instrument of writing to be his act and deed.

[L. S.] In testimony whereof, I have hereunto set my hand and affixed my notarial seal, the 7th day of April, A. D. 1856.

EDMUND WILCOX, *Notary Public.*

Under the third charge, that of dishonesty in the administration of a fund confided to Lieutenant Bartlett by his messmates on board the Portsmouth, the following correspondence and testimony was produced to the committee:

UNITED STATES SHIP PORTSMOUTH, *October* 8, 1846.

When you ceased to be caterer of this mess at Monterey, and rendered an account of your office, we became convinced that you had not only betrayed the trust reposed in you by your messmates, by the most culpable negligence, but likewise in a manner far more serious, to which we only now allude. For this and for a number of other acts of yours, while on board this ship, we have long ceased to have for you the feelings of an equal, and have wished no longer to know you, and now that you have left the ship and ceased to be a member of our mess, we take this manner of intimating to you that we wish hereafter to meet you as a stranger.

J. S. MISSROON,
JAMES H. WATMOUGH,
BENJAMIN F. B. HUNTER,
A. A. HENDERSON, *Assistant Surgeon.*
M. DUVALL,
N. B. HARRISON, *Acting Master.*

W. A. BARTLETT, *Lieutenant.*

OFFICE IN YERBA BUENA, *October* 15, 1846.

SIR: I am under the necessity of addressing you concerning a note which I have received, signed by Lieutenant Missroon and five other officers of the ward-room mess of the ship, charging me with "cul-

pable negligence in managing the affairs of the mess," "and, also, betraying the trust reposed in me in a far more serious manner," "and that for this and a number of other acts while on board the ship they desire hereafter to consider me a stranger."

Charges like the above, sir, cannot be by me received without meeting them, let the consequence be what it may. I meet them with the most positive denial of any foundation in fact, and demand that they be proved or withdrawn.

I place myself on the ground of my entire innocence of any such intent or act, as implied in the charge, and upon that ground I will stand or fall. What the "other acts" referred to are I know not; but I feel confident in asserting that any "act" of mine, either public or private, can be explained to any unprejudiced mind in such a manner as to acquit me from any serious offence against the laws of the navy, or propriety of conduct required of me as an officer and gentleman.

I submit to you, sir, the case, and desire that you call upon them to show why they have taken this course, when there are methods of proceeding so different, and which would give me a fair chance of confronting them, which cannot be expected without others to decide between us.

I shall await patiently the time when I can meet these charges on fair terms, either before yourself or any court of inquiry or court martial, which may be required to bring out the truth, and this matter to a final issue; that issue I have no desire to avoid, and the only reason that I did not lay it before you the moment I received the note was because the exigencies of the service, as you are well aware, required that there should be no interruption to the preparations for the hurried departure of the forces. Relying on the ground of my entire innocence, and the power of truth, I await the result with all possible calmness, and the continued desire to merit your approbation in the discharge of all my duties.

Very respectfully, sir, I have the honor to be your obedient servant,

WASHINGTON A. BARTLETT,
Lieutenant United States Navy.

Commander J. B. MONTGOMERY, *U. S. N.*,
Commmanding Northern District of California.

UNITED STATES SHIP PORTSMOUTH,
Yerba Buena, October 16, 1846.

SIR: Mr. Bartlett in his letter to you of yesterday, apprising you of the determination which the ward-room mess has arrived at in his case, has been pleased to place me in a conspicuous position, by the sole mention of my name; this, and his tone of defiance, make me feel myself called upon to meet a certain part of that letter in a manner more direct than otherwise I should have been disposed to do.

Mr. Bartlett says, "I feel confident in asserting that 'any act' of mine, either public or private, can be explained to any unprejudiced mind in such a manner as to acquit me from any serious offence

against the laws of the navy, or propriety of conduct required of me as an officer and gentleman," and "I shall await patiently the time when I can meet these charges on fair terms, either before yourself or any court of inquiry or court martial, which may be required to bring out the truth," &c.

In the first place, sir, I desire it to be understood that, as the executive officer of this ship, I have more than once seriously thought of preferring charges against Lieutenant Bartlett; but have, in each instance, been deterred *solely* by the entire prostration of the man when spoken to by me officially of his acts, which were at variance with the usages of the service, and with the deportment of an officer and gentleman. This feeling of compassion is now, however, removed by the assurances which he gives you of the uniform propriety of his conduct, challenging investigation.

I beg leave therefore to inform you, sir, of my immediate readiness to submit charges against Lieutenant Bartlett, for unofficer-like conduct, in bringing to sea a stock of clothing, cloths, cigars, &c., which were vended to his brother officers and others; making his state-room a kind of huckster's shop, and degrading thereby the respectability of the ward-room. In speculating upon a private library and meanly soliciting subscriptions of money from individuals, some of whom, it was well known, would not continue in the ship longer than her outward passage, and among whom was a public functionary. In disposing of, at *private* and *secret* sale to a lady at Monterey, an article of dress, at an exorbitant advance upon its cost; and when detected and exposed in it, withdrawing the article, thus showing his consciousness of the impropriety; all of which, whenever required, shall appear in specific form. My information on the foregoing points was mainly derived from the ward-room officers, enough of whom are now in the squadron to substantiate the charges.

If it be deemed proper to go further back than this cruise, or should Mr. Bartlett desire to do so, in order to establish the point of "that propriety of conduct required of me as an officer and gentleman," there will be no difficulty in adducing instances upon the testimony of respectable officers, (I name Passed Midshipmen Morris and Duer,) which occurred in the surveying service, and which places Mr. Bartlett in a worse light than anything charged against him in this letter, a statement of which you are at liberty to call on me for.

Lieutenant W. Shenck, who is expected here in February, is an important witness, now that Lieutenant Forest has returned to the United States. With a desire to act openly in the matter, I would respectfully request that Mr. Bartlett may be made aware of all I communicate to you on this subject, and I beg leave to suggest that, if you determine to recommend a court, or if Mr. Bartlett still desires to have one, it be assembled before the witnesses now in the squadron return to the United States, among whom are Dr. Chase, Mr. Carter, and Mr. Shenck.

Very respectfully, your obedient servant,

J. S. MISSROON,
First Lieut. U. S. Ship Portsmouth.

To Commander J. B. MONTGOMERY, *U. S. Ship Portsmouth.*

UNITED STATES SHIP PORTSMOUTH,
Yerba Buena, October 16, 1846.

SIR: We have perused the letter of Lieutenant Bartlett handed by you to the executive officer last evening, which complains of the grounds upon which we have thought it necessary and proper to desire him to discontinue his acquaintance with us in future.

In addressing you this letter we beg leave to assure you, sir, that we do not feel ourselves bound to answer any demand coming from Lieutenant Bartlett; we write only for your information.

The palpable maladministration of our mess affairs induced the mess to deprive him of the office of caterer. Suspicions of his dishonesty in the disposal of funds entrusted to him were strengthened by his delay and evident reluctance in yielding up the mess accounts to his successor; but these mere suspicions became confirmed when, in course of examination, it appeared that he had charged more than was proved to have been the actual daily expenses, in several instances, and which, when so proved, he in subsequent accounts altered the items to suit the evidence adduced against his previous statement. The balancing of his accounts was made by a convenient and repeated insertion of "sundries" of which he could give no satisfactory information.

At this period it was contemplated to signify to Mr. Bartlett, that he could no longer be associated with as a messmate, but his pitiably depressed deportment, and meek submission to the cool reserve with which he was generally treated, moved our compassion, while it convinced us of his conscious guilt. When, however, he considered himself as withdrawn from the mess by his engagements on shore, we were unwilling to be longer recognized by him as acquaintances, and therefore it was that we addressed him our note.

"Other acts" to which we had reference, and of which Mr. Bartlett most strangely professes himself to be ignorant, scarcely require recapitulation here; those committed previous to, as well as during the present cruise, have certainly given him a most unenviable reputation and notoriety in the navy, so much so, indeed, that no less than two officers of standing, now in this squadron, have objected to orders to this ship, because they would necessarily by them be associated with Mr. Bartlett, alleging his character as the ground of objection. But, sir, in order to avoid a charge of vague generalities in a matter so serious, we will cite an instance of disreputable conduct of comparatively recent occurrence, which has had great weight with us in the course we have taken.

At Monterey, in May last, he disgraced himself as an officer, and reflected discredit upon his ship, by smuggling and disposing of an article of dress to a lady, at an exorbitant advance upon its cost, evincing at the same time his own sense of the impropriety of the transaction by asking a promise of secrecy, and by subsequent shameful equivocation when questioned on the subject.

We are surprised at his assumed defiance and reckless denial of facts which are so susceptible of the fullest proof, and in order that

Mr. Bartlett may comprehend his position, we respectfully request that he may see this letter.

We have the honor to be your obedient servants,

J. S. MISSROON, *Lieutenant*,
BEN. T. B. HUNTER, *Acting Lieutenant*,
JAMES H. WATMOUGH,
A. A. HENDERSON, *Ass't Surgeon*,
N. B. HARRISON, *Acting Master*.

ALCALDE'S OFFICE, YERBA BUENA,
November 14, 1846.

SIR: Enclosed you will receive the letters to which you referred in your letter to me of this date. I trust that, through a kind Providence, the time will come when the poison shall be extracted from them, and my mind relieved from the load with which they have oppressed me. As, sir, you did not ask me to make any explanations upon them, I shall not offer any, except to say that my anxious efforts to serve my messmates faithfully, and in all things to the best of my ability, have been most sorely requited; while acts of kindness and repeated solicitation to part with some articles I could spare (although always unwilling) have been represented in a light far different from that in which they were received, when it was considered that a favor had been conferred; and others are stated or rumored that have no foundation in fact. Upon such charges it seems useless to attempt by explanation to disabuse the minds of those who state that they have so deliberately concluded; therefore I cannot hope that aught I could say would make any favorable impression upon them; hence I only say or write thus much, and to you, sir, only.

Trusting that to my esteemed commander, who has so long known me, I shall be yet able to make good my defence and prove ever worthy of his confidence,

I have the honor to be, with high respect, your obedient servant,
WASH'N A. BARTLETT.

Commander J. B. MONTGOMERY,
United States Ship Portsmouth.

Commander J. S. Missroon deposed that "Mr. Bartlett was placed in Coventry for transactions believed to be dishonest, and which he failed to explain satisfactorily when aware of those doubts by his messmates of his honesty."

Purser James H. Watmough deposed that "it was the opinion of the mess that they had been defrauded by Bartlett. Bartlett stated he had given the steward such an amount; the steward denied it."

Dr. A. A. Henderson deposed that "he had a decided conviction at the time the letter of October 8, 1846, to which his name is signed,

was written, that Bartlett was dishonest. When Bartlett submitted his accounts as caterer of the mess of the Portsmouth, there was a want of a proper series of vouchers.

"From the action of the mess it must have been evident to Bartlett that his messmates entertained doubts of his honesty in disbursing the mess funds. Instead of meeting this in a manly and straightforward spirit, he seemed to be depressed, and to endeavor to shrink from an investigation. In the vouchers submitted by him, certain daily expenditures were charged for marketing, which the ward-room steward asserted were incorrect and too large. This, upon being pointed out to Bartlett, was altered by him to suit the assertions of the steward, by changing and deducting amounts in certain items, and adding to others, although the aggregate amount remained unchanged."

"Witness associated freely with officers of the navy on Pacific coast, and had opportunities of learning Bartlett's standing among his peers. It was bad. He was often spoken of contemptuously, and was regarded as deficient in the spirit of a gentleman. It was the conviction of witness that Bartlett declined urging his own trial, fearing to meet the result."

Dr. Marius Duval deposed that, "about the time witness joined the vessel, Bartlett told him that his mess account would be for initiation $43, and regular account $30, all of which witness paid him. On the arrival of the vessel at Monterey, the purser informed witness that Bartlett had drawn $30 on witness' account, for mess, &c. In less than two months the mess were surprised to find that there were no mess stores. Bartlett was broken, and another caterer chosen.

"The mess asked Bartlett for a statement of his account, but he could not render a satisfactory one. However, he did make a statement, which contained inconsistencies that were pointed out to him. He thereupon altered it in various particulars, but only made it more confused. Witness thought this a perfectly dishonest transaction on the part of Bartlett. Bartlett attempted to make explanations, but they were unsatisfactory. The mess charged him with dishonesty. He looked like a culprit, and could hardly hold up his head. Indeed, his condition was so abject, that it excited a good deal of commiseration in some of the mess. Perhaps the mess would have arrived at a different conclusion, had not Bartlett been a ready penman and good at figures, and particularly careful in matters where his own money was directly concerned. After these transactions Bartlett went on shore and attempted to create the impression that he was popular with the mess.

"Witness associated freely with officers of the navy while he was on Pacific coast. Before witness knew Bartlett he had heard of him, and he was always spoken of contemptuously. As a general thing he was looked upon in the squadron as a very dishonest and dishonorable person."

"The mess of the Portsmouth consisted of nine members. At the time the letter October 8, 1846, was written, some of the mess were engaged on shore duty. All of the mess on board at the time signed said letter."

By the testimony of Commander Missroon, it appears that Bartlett was separated from the active list by a vote of fourteen to one. He was dropped by thirteen votes, one given for leave of absence and one for furlough.

The minutes of the evidence taken before the committee, and all other papers connected with the examination of the case, are herewith submitted, in order that if the Senate should deem it expedient they may be printed with the report.

SENATE NAVAL COMMITTEE ROOM,
March 8, 1856.

Present: Mr. Mallory, Chairman, Mr. Fish, Mr. Slidell, Mr. Bell.

The committee took under consideration the case of Wash. A. Bartlett, late a lieutenant in the United States navy, and whose petition to be restored to his former position in the navy is now pending before this committee.

Mr. Bartlett being present,

Lieutenant Charles C. Simms, United States navy, appeared and was sworn by the Chairman.

Mr. Bartlett inquired of the Chairman if he could be allowed to have counsel and introduce witnesses.

The Chairman replied that it was unusual to have counsel before committees.

Mr. Bell said that Mr. Bartlett was not on trial. The committee took this action merely to satisfy themselves. Could not examine witnesses and hear counsel. Could not go into a technical and critical examination as could a court martial.

Mr. Slidell said it was a physical impossibility. Impossible to allow counsel. It would take too long. Committee would only go into an examination of Mr. Bartlett's expenditures in France and his conduct during his cruise in the Pacific. Also, would examine into a letter published some weeks since in New York Herald, purporting to be the result of a conversation between Commodore Perry and Mr. Bartlett, and attributed to Mr. Bartlett.

Mr. Chairman said the committee would furnish the identical facts on which the Board acted in this case, and will report on facts which may or may not have been before said Naval Board.

Lieutenant Simms, being examined, deposed as follows:

He is a lieutenant in the United States navy. Served with Bartlett on the Pacific coast. Left New York in United States schooner Ewing as passed midshipman. Did not sail as acting master. Bartlett was executive officer of the Ewing when she left United States. Mr. Rhind afterwards became the executive officer. Was on board the Ewing two years. The Ewing was commanded, part of the time, by Bartlett, and part by Lieutenant McArthur. Knows that Bartlett had some pictures and two watches when he sailed. Don't know how they were disposed of. Is satisfied they were not landed in the vessel's boats.

In

In conversation the charge was that Bartlett had passed goods through the custom-house. He heard Bartlett say the clothing he had was worth $750; taken on board the John G. Coster at Valparaiso and landed at San Francisco. Bartlett said Harrison (custom-house officer) passed them for the use of the vessel. Witness was attached to the vessel. The goods did not go on board. This was a matter of public notoriety on shore. It was in the year 1849.

Witness received a letter from Bartlett saying he (B.) had been accused of using schooner Ewing for smuggling purposes. Witness afterwards met him and said he knew nothing personally about it. Bartlett said he had seen Harrison, and had told him the goods were for the use of the vessel, and Harrison had charged nothing for passing them.

Bingham, Reynolds, Bartlett & Co., were a public firm in San Francisco. I think said firm had cards out, signs, &c. Bartlett was in the navy at this time, apparently attached to schooner Ewing, but held no position on board. Was executive officer, but did not perform the duties nominally attached. Bartlett appeared to give his personal attention to the store, and was active therein. Never saw him sell goods, but can bring evidence that he did. Was in the store, saw bales of goods, &c. Appeared to be doing a good business. It was a whosesale and retail store, to the best of his belief. Store was well stocked. It was witness' impression that the United States seamen and boats had been used for the purpose of carrying Bartlett's goods on shore. Has since understood from Lieutenant Rhind that he protested against it, and it was not done. Bartlett, while attached to the Ewing, during her absence to the Sandwich Islands for several months, performed no duty. Witness, on 12th March, 1850, reported Bartlett for not attending to duty and for keeping on shore. Said report was, however, withdrawn, and Bartlett ordered on watch.

(Here witness introduced his said report, which is hereto annexed, marked A, which was read and made a part of witness' deposition.)

Bartlett objected to the reading of this letter, saying it was the first time he had ever heard of it. Said he never was the proper executive officer of the Ewing. Was commander, was relieved. Was to be attached to the Edith, which was lost.

Witness stated that statements contained in said letter were correct.

Mr. Chairman. What was Bartlett's general standing and reputation among his peers?

Answer. So far as witness knows, he never had an enviable reputation. Not such a one as he should like to have had himself. Witness was out on Pacific coast nearly four years. Nearly two years on board Ewing. Associated freely with naval officers while in the Pacific. Knows of no other transactions of trade by Bartlett than those alluded to. This evidence given by him is of his own knowledge. Knows nothing to exonerate Bartlett from these charges. Was on board the Massachusetts after he left the Ewing, and came home in the Lexington store-ship.

Mr. Slidell here remarked that he considered the general standing of a man among his peers a fair method of investigation in revising the action of such a Board as was the Navy Board, &c.

In reply to a question by Mr. Fish, witness said Bartlett was connected with the Ewing about a month after her arrival on the Pacific. Bartlett said he went on board as a volunteer.

Witness resumed: Was attached to vessel when Bartlett went on board to go to Oregon. Bartlett was on board several months. Came from Oregon to California in September. On return of vessel, witness left her, I can't say whether Bartlett remained on board any longer.

Cross-examined by Bartlett:

Question. Don't you know that McArthur never intended to go out in the Ewing, &c.

Answer. No. Heard, after arrival in California, that there were to be two vessels on that service (surveying?) Was not aware that Bartlett was to be relieved from duty by McArthur. So far as surveying was concerned, Bartlett was actively engaged, but not as to duties of ship. Lieutenant McArthur left at Astoria to go to Puget Sound. Bartlett commanded as senior officer.

In reply to question by Mr. Chairman: His knowledge of the sale of the pictures was derived from Bartlett himself. The pictures were carried out in the Ewing. There were two or three of them. Can't say they were carried out for the embellishment of the ship. Don't know what they were sold for.

(Bartlett said they were engravings: Battle of Chepultepec and Senate Chamber.)

It was a matter of notoriety on shore and on board that Bartlett, while executive officer of the Ewing, was publicly engaged in mercantile business.

Never saw Bartlett till he met him in the Ewing.

Knows nothing further, &c.

Purser James H. Watmough, United States navy, was now sworn and examined, and deposed as follows:

He sailed from Norfolk in 1845 in the Portsmouth sloop-of-war. The first thing he heard commented upon was the fact of Mr. Bartlett having brought on board a parcel of books for the use of the vessel, and that he had collected $90 from the officers therefor. Thinks the books were Harper's circulating library. Witness was purser. This act of Bartlett's, in bringing books on board, was commented upon as being officious. Don't think there were $90 worth of books, but don't know.

There was a Mr. Smith on board as a passenger, in character of a public functionary. Bartlett sold him (Smith) twelve shirts, at $1 each. Thinks he saw the bill, but is not certain. This was a matter of notoriety on board ship. The mess laughed at it. Bartlett sold a shawl in Monterey to a lady on shore. Said shawl cost Bartlett $7; the lady told witness she gave $10 for it. Witness saw the shawl on the lady's shoulders, and at once identified it. Never said anything to Bartlett about it. Knew the shawl, because he had wanted to purchase it of Bartlett. Informed Lieutenant Missroon of the affair. Bartlett was compelled to take the shawl back. Thinks that Dr. Duval and himself made the lady a present of another shawll that she might lose nothing by her transaction with Bartlett.

(Here the letters marked B were introduced by Mr. Chairman and read.)

Mr. Bartlett said he had himself made the letter of Lieutenant Missroon, et. al., to Captain Montgomery an official paper.

Mr. Slidell.—*Question.* Was application made to the *crew* of the Portsmouth to subscribe to the library, and was it stopped by the officers.

Answer. Was under the impression that it was intended to be made, and that an order was given to stop it.

In answer to another question by Mr. Slidell, witness answered: It was the opinion of the mess that they had been defrauded by Bartlett.

In reply to a question by Mr. Fish, witness replied: Bartlett stated he had given the steward such an amount; the steward denied it. Witness did not himself examine the accounts. Dr. Henderson was one of the gentlemen who examined the accounts.

Cross-examined by Mr. Bartlett:

Don't recollect that Mr. Watson was caterer. The lady told witness she gave Bartlett ten dollars for the shawl. Did not say Bartlett's shawl was smuggled. The shawl taken on shore by Dr. Duval and witness, and presented to said lady, was taken on shore by permission of the collector. Thinks that some of the officers of the Massachusetts had articles for sale. Saw things for sale on board the Constitution. Remembers the shawl, because he wanted to buy it himself. Bartlett was not present when lady told him she had bought it of him, (B.) (Bartlett here said he had given the shawl to the lady, and that, afterwards, her husband presented him with a horse, worth about ten dollars.)

Witness bought a quarter cask Madeira from Purser Taylor, on board the Constitution, who brought it home for him, &c.

Don't remember that the library was taken on board the Portsmouth by consent of officers. Don't think there were one hundred volumes. Remembers Smith was sick at Valparaiso, &c.

(Here Mr. Bartlett submitted papers marked, respectively, C, D, and E.)

C purports to be a list of articles for mess, &c., in the handwriting of witness, as admitted by him.

D purports to be mess account of Mr. Bartlett.

E is the bill containing catalogue of books, sold by the Messrs. Harpers, and by him said to have been placed in the Portsmouth.

Witness, in reply to a question by Mr. Bartlett, said: He had known officers to give up articles of clothing to other officers, &c., but never knew them to sell them.

Mr. Bartlett said Lieutenant Watson, of marine corps, was caterer.

Witness said Mr. Watson was not asked to sign the letter written by Lieutenant Missroon, himself, et. al., to Bartlett.—(See B, for letter alluded to.)

Don't recollect how long after the settlement of the mess affairs at Monterey before letter of October 8 was written. Was not in the

ship when said letter was written; signed it on his return thereto. Caterer of a mess has full discretion, &c.

In answer to Mr. Chairman. Was in the Pacific between three and three and a half years. Associated freely with officers of the navy. Bartlett was unpopular. Do not think he had any standing as an officer or as a man. Do not think he had a friend. Thinks none of the crew paid anything towards Bartlett's library, only officers. Do not know that Bartlett withdrew the subscription list. Do not know positively about an order being given to stop the list.

Cross-examined by Mr. Bartlett:

Do not recollect whether the officers of the Constitution sold anything to officers of the Portsmouth. Do not recollect about Lieutenant Missroon buying things, &c.; thinks it probable. Do not know that Commodore Biddle disposed of articles brought by him from China and Japan, &c.

Question by Bartlett. Did you ever know any testimony that would stand the test of a court martial?

Answer. Cannot say how far the steward's testimony would go.

Knows nothing further, &c.

Lieutenant Pendleton G. Watmough, United States navy, was now sworn and examined, and deposed as follows, viz:

Was on board the Portsmouth about five months as midshipman. Knows nothing relative to charges against Bartlett relative to mess account, &c. As a general thing, the officers and sailors had no confidence in Bartlett; witness had not. Bartlett was not considered to have any high or respectable standing among his peers as a gentleman or an officer. * * * It is not unusual to have libraries, and for sailors to subscribe, &c. * * * Was in the Pacific three years. Saw how Bartlett was treated by his messmates with contempt, degrading to have to submit to, in manner, voice, and gesture. Associated freely with the officers in the navy during his stay in the Pacific.

Cross-examined by Mr. Bartlett:

Left Norfolk in the Portsmouth in 1845. Went to Rio, then to Valparaiso. Knows nothing of Bartlett's mess accounts, because he (witness) was in the steerage. Thinks he subscribed to Bartlett's library, but do not recollect. Has no recollection of giving his consent to said library. Has subscribed to libraries on board ship, and known the men to do so also. Bartlett bore the reputation generally of being fond of exaggerating, of the marvellous, general looseness of moral principle, want of veracity. He had some merit as a mathematician, surveyor, and navigator.

Knows nothing further, &c.

Committee adjourned, to meet at 10 o'clock, Tuesday, proxima.

TUESDAY, March 11, 1856.

The committee met pursuant to adjournment.

Present: Mr. Mallory, Chairman, Mr. Fish, Mr. Slidell, Mr. Bell.

The consideration of Mr. Bartlett's case was resumed.

H. J. Anderson, commissioner of customs, was duly sworn. Previous to his examination, Mr. Bartlett read and submitted the paper hereto annexed, marked F, and then withdrew from the committee room.

Lieutenant Thornton A. Jenkins, United States navy, and secretary Light-house Board, was now sworn and deposed as follows:

In October, 1854, the accounts of Bartlett for disbursements and personal expenses to and from and in Paris, while attending the construction of eight illuminating apparatus for the coast of California, under the written instructions of the Secretary of the Treasury, (hereto appended, marked G,) were referred to the Light-house Board for preliminary examination, and such a detailed report thereon as would enable the Secretary of the Treasury and accounting officers to decide upon the various charges contained therein. Bartlett came to witness' office subsequently to the receipt of these vouchers and accounts, and was told they had been so referred, of which reference he seemed to have been previously apprised.

On October 26, 1854, witness, as secretary of the Light-house Board, addressed a letter to Bartlett, informing him of the fact that his accounts were before the board for action, &c. To this letter no reply was received.—(Copy of letter hereto annexed, marked H.) Witness again wrote Bartlett, (see letter, copy of which is hereto annexed, marked I.) Bartlett promptly replied to this last letter, expressing his willingness to explain, and desire for settlement, &c. Shortly after receipt of this, his reply, Bartlett came to the office, early in the morning, and spent the time there that day until nearly nine o'clock at night. During that day and evening he (B.) spoke almost continuously of his trip to Paris, his accounts, &c., without being specific, evidently with a view to elicit from witness the opinion of the Light-house Board relative to his personal expenses account on said trip, &c. Witness informed Bartlett, in as delicate a manner as possible, what he (witness) conceived to be the general opinion of the members of the Light-house Board, all of whom (except the Secretary of the Treasury and Professor Bache) were present at the meeting of said board when Bartlett's accounts were examined and discussed. Witness even pointed out to Bartlett certain vouchers which he thought very exceptionable. Finally, Bartlett asked him what he should do. Witness told him frankly and promptly that he ought to withdraw all of his vouchers for personal expenses. Bartlett then asked if he was to lose all his personal expenses. Witness replied: By no means. That his instructions comprised a maximum limit, and witness had no doubt that if Bartlett, as he said, could satisfy the Secretary of the Treasury that his expenses had been greater than that maximum, he would make as just and liberal an allowance as possible. Bartlett then addressed a letter to the Secretary of the Treasury, and filed it in lieu of his accounts and vouchers, which he withdrew. The vouchers for disbursements were then properly stated and sent to the Secretary of the Treasury with Bartlett's letter, submitting his claim for personal expenses, and the report of the Light-house Board thereon, (hereto appended, marked K.) Bartlett claimed $4,011 dollars for personal expenses, covering 27 months. The particular vouchers to which Bartlett's attention was called by

witness were, his bill at Fenton's hotel, London, for 2½ days board and expenses $45, which now appears to have been altered to $34 35; his vouchers for transportation of extra baggage, trip to Spurn lights, loss of baggage, and for medicine. The opinion of witness was that none of these would pass the board. Witness thought the vouchers submitted by Bartlett evidently included family expenses, and were, consequently, all objectionable. Bartlett was finally allowed 3 per cent. on expenditures, amounting to $2,700. After withdrawing his accounts, Bartlett told witness he had restored them.

Witness and Lieutenant Richard Bates travelled over Europe, visiting nearly every place where a light-house was located, and spent 10 or 11 months thus, and their joint expenses were about $2,000, and they were nearly constantly in motion.

H. J. Anderson, commissioner of customs, being sworn, deposed as follows:

The charge of Lieutenant Bartlett, at Fenton's hotel, London, was reduced by my direction, there being a charge for parlor, not deemed necessary, and the alteration in the voucher was probably made in consequence of that decision, as I think it was made known to him on the first presentation of his account.

The charges for transportation of extra baggage, medical attention, and medicines were also disallowed.

The aggregate charges in Lieutenant Bartlett's account amounted to $4,011 70. The sum stipulated for his expenses at the time of his appointment was a sum not exceeding three per cent. upon his expenditures, which per centage amounted to $2,712 42 In addition to the disallowances above stated, a sum sufficient to make the difference between these sums was also disallowed.

The whole sum allowed Mr. Bartlett was $2,712 42. The estimated expense of transportation from Washington to Paris *via* New York, Liverpool, and London and back, was $500, which would cover $2,212 42 for his personal expenses in Paris during the twenty-six months of his residence in that city. This would be $2 83 per day.

Commander J. S. Misroon, United States navy, being duly sworn, deposed as follows:

Question. State the grounds upon which the board acted and decided Mr. Bartlett's case?

Answer. The character in the navy of Mr. Bartlett was known to several members of the board as defective in some of the essential qualities necessary to the honor, and therefore to the efficiency, of an officer.

It appeared in the four several and separate investigations of his case, which occurred on the 3d, 11th, 12th, and 13th July, 1855, and upon the personal knowledge of several members, and by official papers on file, and by a copy of an official letter retained in the hands of a member, sustained by his personal knowledge of some of the prominent facts, and his belief in others, that certain matters of notoriety in regard to the conduct of Mr. Bartlett on board the Portsmouth, especially, were founded in fact.

The board also were influenced by an examination of certain ac-

counts and papers on file in the Treasury Department, recently rendered by Mr. Bartlett for his expenses in Paris, which were not admitted by the department until altered, and certain charges for items in which were deemed discreditable to Mr. Bartlett as an officer.

It was known to one or more members of the board, that his conduct, on board of the surveying schooner Ewing, was discreditable to him, and believed to have been dishonest.

It appeared to the board that Mr. Bartlett failed to insist upon or demand investigation into the charges made against him in an official letter, dated October 16, 1846, on board the Portsmouth, although a court sat on board the vessel competent to his trial in November, 1847.

Question. What was the standing of Mr. Bartlett among his peers on that station at that time?

Answer. By no means creditable to him. I learned that several officers in the squadron declined being attached to the Portsmouth on account of an association with Mr. Bartlett. Mr. Bartlett possesses certain good qualities, of an obliging and amiable disposition, always ready to render service, and zealous in attending to his duty.

Question. State the cause of his bad standing?

Answer. I believe that he was considered unreliable, and the course of his messmates towards him shows that his honor and honesty was, at least, doubtful, if not entirely distrusted.

Question. Were there any special cases of dishonesty?

Answer. He was placed in Coventry for transactions believed to be dishonest, and which he failed to explain satisfactorily, when aware of those doubts of his honesty by his messmates; but I would rather that other members of the mess now in the country should answer to this enquiry.

Question. What was his standing as a seaman?

Answer. I think he knows his profession very well. He labors under disadvantage in being easily flurried or thrown off his balance when unexpectedly called upon to act.

Question. State what knowledge you possessed, or upon what you relied, to prove the charges set forth against Mr. Bartlett in your official letter of October 16, 1846.

Answer. In the case of selling goods to his brother officers from his state room, I know, by the remarks of Dr. Chase, that Mr. Bartlett sold some cloth to him; and from Mr. Delazon Smith, a public functionary of the United States, that he had purchased shirts and other articles of Mr. Bartlett, for which a bill was duly rendered as "Bought of Lieutenant Washington A. Bartlett." I heard, at the time, of many other instances of sales of clothing and segars.

When spoken to officially by me, as the executive officer of the Portsmouth, of the impropriety of his conduct in regard to the above, Mr. Bartlett did not deny the charge, but stated that it was done as an accommodation to others.

In the case of soliciting subscriptions to his library, I heard it stated by the individuals themselves to whom he applied; among others, Mr. Delazon Smith and Dr. Chase stated that he had asked for $5 for the perusal of his books, and it was notorious that both these gentlemen were merely passengers to the Pacific. It became

known to me, in the exercise of my official duties, that Mr. Bartlett had authorized a subscription list to be circulated among the crew of the Portsmouth, contrary to my express order issued to Mr. Bartlett, that no such list should so issue until the crew could examine the books gratuitously furnished them by government. When detected in the disobedience of a proper order, he endeavored, but failed, to show that he had not authorized the circulation of the subscription list among the crew.

In the case of selling an article of dress to a lady in Monterey, Purser Watmough informed me of the facts substantially as specified in my letter of October 16, 1846, adding that he had received the information from the lady in question.

When questioned by me on the subject, Mr. Bartlett did not deny having sold the article to the lady, nor did he deny the price, which it was said he had received for it. But he endeavored to excuse the sale by stating that he did not want it, that it required attention to preserve it, and that the lady desired to possess it. He did not deny having smuggled it to the shore when I remarked that he was open to the charge of having smuggled the article under his uniform into a foreign country; nor did he reply to my comments upon the exorbitant advance he had received upon its cost, which I happened to be aware of. He appeared to be much affected by the detection, and expressed the hope that no further notice should be taken of the matter.

I reported all these several circumstances to the commander of the ship as they occurred, which concluded my duty as an executive officer. In consequence of the defiant tone of Mr. Bartlett, on a subsequent occasion, I offered, in my letter of October 16, 1846, to frame charges upon these reports, which letter is now before the committee.

Question. What were the particular circumstances and items which attracted the attention of the board in the accounts of Mr. Bartlett as rendered to the Treasury Department, and which were considered disreputable to him?

Answer. The accounts were submitted to the Light-house Board for examination. It appeared that the vouchers were of a character which could never pass with the approval of the Light-house Board, and he was afforded an opportunity to withdraw or explain them. It was known to several members of the board, who were attached to the light-house service, that he had rendered accounts claiming more money than it was understood he should receive for that duty; and that he had admitted, on the examination of his accounts, virtually, that the items charged embraced the expenses of his wife and children also. That, by advice, he had withdrawn the charges or accounts, but had afterwards reproduced them, and that they then appeared on file in the Treasury Department. These accounts were found to contain exorbitant charges, and impressed the board unfavorably of his honesty, viz: He claimed expenses for constructing *sixty-three* light-house illuminators, but he was ordered to attend to no other duty than to enter into contracts, &c., for eight illuminating apparatus, under an order dated July 16, 1852. A charge appeared for office of agency in Paris, when no office was authorized nor required; and it appeared by another bill, that this office was the quarters of himself and family.

A charge for visiting English lights, which visit was unauthorized. A charge for parlor in London. Fenton's bill for $34 25, for two and a half days' board; originally charged $45. Doorkeeper and messenger for two years. Servant's hire, which appeared to have been made out after his return home; which, if presented at all, should have been charged as paid. Druggist's bill, &c.

It was known that Mr. Bartlett was to be allowed his reasonable expenses, not, however, to *exceed* three per cent. upon his expenditures, and that he could not properly claim a sum exceeding $2,700; yet, that his original claim exceeded $4,000. He was on duty pay the while.

It is not considered honorable in the navy for an officer to present accounts which he cannot adhere to.

Question. State the vote by which Mr. Bartlett was separated from the active list; and also the vote by which he was dropped?

Answer. He was separated from the active list by a vote of 14 to 1. And was dropped by 13 votes, 1 leave, 1 furlough.

Dr. A. A. Henderson, passed assistant surgeon United States navy, being duly sworn, deposed as follows:

He joined the ship Portsmouth early in 1846. Had never met Bartlett before. Had a decided conviction at the time the letter of October 8, 1846, to which his name was signed, was written, that Bartlett was dishonest. When Bartlett submitted his accounts as caterer of the mess of the Portsmouth there was a want of a proper series of vouchers. From the action of the mess it must have been evident to Bartlett that his messmates entertained doubt of his honesty in disbursing the mess funds. Instead of meeting this in a manly and straightforward spirit, he seemed to be depressed and to endeavor to shrink from an investigation. In the vouchers submitted by him certain daily expenditures were charged for marketing, which the ward-room steward asserted were incorrect and too large. This, upon being pointed out to Bartlett, was altered by him to suit the assertions of the steward, (by changing and deducting amounts in certain items and adding to others,) although the aggregate amount remained unchanged. Having this conviction, (of Bartlett's dishonesty,) witness, with other members of the mess, joined in writing a note to Bartlett, (see B,) which led to the subsequent correspondence now before the committee, (B.) Upon carrying this note to Lieutenant Misroon for his signature, he at first objected, from motives of pity and compassion; but, upon having it pointed out to him that his signature was absolutely necessary, he was induced to sign it.

Witness associated freely with officers of the navy on Pacific coast, and had opportunities of learning Bartlett's standing among his peers. It was bad. He was often spoken of contemptuously, and was regarded as deficient in the spirit of a gentleman. It was the conviction of witness that Bartlett declined urging his own trial, fearing to meet the result.

Committee adjourned.

THURSDAY, MARCH 14, 1856.

The committee met and resumed the consideration of Mr. Bartlett's case.

Present: Mr. Mallory, chairman, Mr. Thompson, Mr. Fish, Mr. Slidell, Mr. Bell.

Dr. Marius Duval, passed assistant surgeon United States navy, being duly sworn, deposed as follows:

He joined the Portsmouth at Mazatlan. Bartlett was lieutenant on board of her. Had never met him before; was perfect stranger to him. Was on board the Portsmouth about six months. About the time witness joined the vessel Bartlett told him that his mess account would be, for initiation, $43, and regular account, $30, all of which witness paid him. On the arrival of the vessel at Monterey, the purser informed witness that Bartlett had drawn $30 on witness' account, for mess, &c. In less than two months the mess were surprised to find that there were no mess stores. Bartlett was broke and another caterer chosen.

The mess asked Bartlett for a statement of his account, but he could not render a satisfactory one. However, he did make a statement, which contained inconsistencies that were pointed out to him. He thereupon altered it in various particulars, but only made it more confused. Witness thought this a perfectly dishonest transaction on the part of Bartlett. Bartlett attempted to make explanations, but they were unsatisfactory. The mess charged him with dishonesty. He looked like a culprit, and could hardly hold his head up. Indeed, his condition was so abject, that it excited a good deal of commiseration in some of the mess.

Perhaps the mess would have arrived at a different conclusion had not Bartlett been a ready penman and good at figures, and particularly careful in matters where his own money was directly concerned. After these transactions, Bartlett went on shore and attempted to create the impression that he was popular with the mess.

Witness associated freely with officers of the navy while he was on Pacific coast. Before witness knew Bartlett he had heard of him, and he was always spoken of contemptuously. As a general thing he was looked upon in the squadron as a very dishonest and dishonorable person.

The mess of the Portsmouth consisted of nine members. At the time letter October 8, 1846, was written, some of the mess were engaged on shore duty. All of the mess on board at the time signed said letter.

Knows nothing further, &c.

Committee adjourned.

MONDAY, MAY 19, 1856.

Present: Mr. Mallory, chairman, Mr. Thomson, Mr. Fish, Mr. Bell, Mr. Slidell.

The committee resumed the consideration of Mr. W. A. Bartlett's case.

Mr. Bartlett presented to the chairman the letter hereto annexed, marked L, which was read.

Professor A. D. Bache was now sworn and examined:

Question 1, *by chairman.* Have you any knowledge, directly or indirectly, touching the sale of a shawl by Mr. Bartlett at Monterey in 1846?

Answer. None.

Question 2. Have you any knowledge, directly or indirectly, touching the discharge of Mr. Bartlett's duties as caterer of the ward-room mess of the United States ship Portsmouth?

Answer. None.

Question 3. Have you any knowledge, directly or indirectly, touching the alleged illegal introduction by Mr. Bartlett into San Francisco, while in command of the Ewing, of certain merchandise by him?

Answer. I was Mr. Bartlett's official chief while he was in command of the United States schooner Ewing, and no report was made to me of any such circumstances, either by Lieutenant McArthur United States navy, in command of the hydrographic party, to which the Ewing was attached, or by any of the officers of the vessel. I have no recollection of hearing of such a matter until recently.

* * * * * * * *

Here the chairman put the questions to the witness, as contained in paper marked B, hereto annexed, submitted by Mr. Bartlett, to which witness replied as follows:

Answer 1. I am superintendent of the coast survey of the United States, and have held that position since 1844.

Answer 2. I do. By correspondence since he took command of the coast survey schooner Ewing in 1849, and personally since his return from the coast of California and Oregon in 1850, as attached to the coast survey, and while serving as special agent of the Treasury Department in regard to procuring Fresnel apparatus for light-houses in France.

Answer 3. He was.

Answer 4. Entirely to my satisfaction and that of Lieutenant Commanding William P. McArthur. In justice to Mr. Bartlett, I should state briefly what those services were. He took the schooner Ewing, a small vessel, which had been used in the revenue service as a cutter, from New York to San Francisco. Was active in pursuing the mutineers who attempted to drown Passed Midshipman Gibson, of the schooner Ewing. Went to Columbia river with Lieutenant Commanding McArthur, though it was understood that unless a second vessel were attached to the coast survey he was to return home. Was active in the survey of Columbia river and the reconnoissance of the western coast. The letters from Lieutenant Commanding McArthur express his sense of Lieutenant Bartlett's services, and refer to him for important information in regard to the coast, showing his confidence in him. He assisted assiduously in preparing the coast survey charts of the western coast at the office.

Answer 5. It was, in my judgment, and in that of his immediate commanding officer, Lieutenant William P. McArthur.

Answer 6. No such report was ever made to me.

Answer 7. Such was my wish, founded upon the estimate which I placed upon his services.

Answer 8. No such report has been made to me. I include rumors, of course, in speaking of reports.

Answer 9. Resting myself upon the facts in regard to his services on board the schooner Ewing, as far as any service of which I have charge is concerned, I do. These facts are, the voyage around the Horn, and the manner in which subsequent difficulties in the survey were met.

Answer 10. I have.

Answer 11. My impressions have been of a favorable character.

Answer 12. As far as my knowledge has extended personally, it has been such as to commend him to my sympathies and esteem. In this I do not express an opinion in regard to the course in his present difficulties; this I do not understand to be in question.

Answer 13. In all transactions of which I have personal knowledge he has, in my judgment, acted uprightly. I have not undertaken to judge of rumors.

Answer 14. No such report was made to me, nor did I hear such a report until recently. Lieutenant McArthur neither said nor did anything leading me to believe that Lieut. Bartlett had acted improperly.

Answer 15. Lieutenant McArthur was one of the most sterling officers I ever knew; upright, frank, and honorable in all his dealings. He is the very kind of officer from whom I should have expected reprobation of delinquencies of any sort, but especially those touching honor. He met the very severe trials to which he was put, in beginning the survey of the western coast, in the most admirable manner. I do not think he could have failed to report any act of delinquency touching the honor of the officers of the party under his charge.

Answer 16. His character and conduct, as far as this can come to my personal knowledge, have merited my approbation.

Commodore Thomas Ap Catesby Jones was now sworn and examined.

Question 1, *by chairman.* Have you any knowledge, directly or indirectly, touching the sale of a shawl by Mr. Bartlett, at Monterey.

Answer. I know nothing of the subject, of my own knowledge.

Question 2. Have you any knowledge, directly or indirectly, touching the discharge of Mr. Bartlett's duties as caterer of the ward-room mess of the United States ship Portsmouth.

Answer. None.

Question 3. Have you any knowledge, directly or indirectly, touching the alleged illegal introduction, by Mr. Bartlett, into San Francisco, while in command of the Ewing, of certain merchandise by him.

Answer. None whatever.

* * * * * * * *

Here the chairman put questions to witness, as contained in paper marked N, (hereto annexed,) submitted by Mr. Bartlett, to which witness replied as follows:

Answer 1. I answer in the affirmative.

Answer 2. I answer in the affirmative.

Answer 3. I never did.

Question 4. Was not put, as being irrelevant.

Question 5. As far down as the word "command," on line 10, was not put.

To the balance of said question, which was put, the witness answered as follows:

I knew Lieutenant McArthur very well. I never heard him say anything against Mr. Bartlett. My impression is that McArthur had full confidence in Bartlett. I am not aware that any occasion arose when it was necessary to express an opinion. I never heard McArthur say anything against Bartlett.

Question 6. Not put.

Question 7. I have known Mr. Bartlett, and met him occasionally as an officer, from the time he was a midshipman. I have never been associated with him on duty, but frequently met with him on the coast of California, while he was in command of the Ewing, which vessel he brought around Cape Horn in good and proper order. And from the year that we were on said coast, from August, 1849, to July, 1850, I never saw nor heard anything impeaching Bartlett's capacity as an officer, or derogatory to his character as a gentleman, except the rumors about the mess affairs of the Portsmouth.

Question by chairman. What were the rumors?

Answer. That he had had some difficulty with the mess.

Question by chairman. Do you recollect the character of the rumors?

Answer. Something about mess accounts and selling clothes. The same rumor represented that Captain Montgomery was satisfied about these matters.

Question 8. I only know that the Ewing, which he commanded, arrived in good order around Cape Horn. His requisitions for supplies were moderate, showing that no material accident or waste of his stores had taken place. There were no complaints made to me by any officer on board of any misconduct.

Mr. A. C. Rhind (late United States navy) was now sworn and examined:

Question 1, *by chairman.* Have you any knowledge, directly or indirectly, touching the sale of a shawl by Mr. Bartlett, at Monterey, in 1856?

Answer. I know nothing about Mr. Bartlett's transactions previously to my personal acquaintance with him. My acquaintance with him was made in 1849, subsequent to his cruise in the Portsmouth.

Question 2. Have you any knowledge, directly or indirectly, touching the discharge of Mr. Bartlett's duties as caterer of the ward-room mess of the United States ship Portsmouth?

Answer. Answered above.

Question 2. Have you any knowledge, directly or indirectly, touching the alleged illegal introduction by Mr. Bartlett into San Francisco, while in command of the Ewing, of certain merchandise by him?

Answer. The first intimation I had of any such charge against Mr.

Bartlett I received in a note from Captain Dupont, while the late Naval Board was in session.

* * * * * * * *

Here the chairman put the questions to witness as contained in paper marked O, (hereto annexed,) submitted by Mr. Bartlett, to which witness replied as follows:

Answer 1. My rank in 1848–'49 was passed midshipman and master, (acting.)

Question 2. Was not put.

Answer 3. They are substantially correct

Answer 4. I know nothing personally of Mr. Bartlett's transactions out there, while I was associated with him on duty, which impeached his honesty in any degree.

Answer 5. Mr. Bartlett discharged all his duties to his government with a degree of ability quite equal to the average of his rank in the service, perhaps superior to many.

Answer 6. I understood from Mr. Bartlett, previous to the departure of the vessel from New York, that Mr. M. Murphy, the draughtsman, would discharge the duties of acting purser. I presume, however, Mr. Bartlett was the responsible individual. I had nothing to do with this department.

Question 7. Was not put.

Answer 8. The vessel, boats, and crew were never, to my knowledge, used for any such purpose. On one occasion I had been on shore in San Francisco on duty, on my return on board I missed one of the boats and crew. I inquired of the officer of the deck where the boat was, and understood that she had been sent by Mr. Bartlett on board of another vessel to assist in breaking out some articles. The boat returned shortly after, and, as I understood, without having accomplished the desired object, either from the absence of the captain, or the person who was to attend to the delivery of the goods. I objected to the boats being sent on such duty, because I did not consider it as appertaining exclusively to the service of the vessel. Whether I stated my objections particularly to Mr. Bartlett, I do not recollect, but they were expressed to the officers generally, and, I think, to Mr. Bartlett personally. The boat was never, to my knowledge, sent back, nor did the crew ever perform any such service, so far as I know. My position there was such that I never would have permitted any such infractions of the requirements of the service, and none such ever occurred. This had almost entirely escaped my recollection, but was recently recalled to my mind by a conversation had (I think, in February last) with Lieutenant C. Simms, one of the officers of the vessel. The name of the vessel to which the boat was sent was the John G. Costar, last from Valparaiso, I think.

Question 9. Was not put.

Answer 10. I was.

Answer 11. I was associated with Mr. Bartlett about nine months. Our intercourse was altogether official. As to Mr. Bartlett's efficiency as an officer, in all respects, I regard him as equal to, perhaps above, the average of his grade; and as to his character, I know nothing reflecting on him or impeaching his honesty as a man. I had been

prejudiced against him, by rumors generally circulated in the service, touching his actions while on a cruise in the Portsmouth, previous to my personal acquaintance with him. These prejudices, and perhaps a difference of disposition, are the reasons, in part, of our former intercourse having then been altogether official. Mr. Bartlett never particularly cultivated my acquaintance, nor I his.

Commander C. Ringgold was now sworn and examined:

Question 1, *by chairman.* Have you any knowledge, directly or indirectly, touching the sale of a shawl by Mr. Bartlett, at Monterey, in 1846?

Answer. None but general rumor.

Question 2. Have you any knowledge, directly or indirectly, touching the discharge of Mr. Bartlett's duties as caterer of the ward-room mess of the United States ship Portsmouth?

Answer. Nothing but rumor.

Question 3. Have you any knowledge, directly or indirectly, touching the alleged illegal introduction, by Mr. Bartlett, into San Francisco, while in command of the Ewing, of certain merchandise by him?

Answer. None whatever. It is singular that, during the whole time from May, 1849, to July, 1850, while there, I never heard anything about it. I heard it when I returned to Washington, I think, in 1850.

* * * * * * * * *

Here the chairman put questions, submitted by Mr. Bartlett, and contained in paper hereto annexed, marked P, to which witness replied as follows:

Answer 1. I was commander in California in 1849 and 1850. Mr. Bartlett arrived there in command of the Ewing a month or two after I did.

Answer 2. Same as above.

Questions 3 and 4 not put.

Answer 5. Same as answer 1.

Answer 6. Such things might or might not have occurred without my knowledge. At the same time, my acquaintance was very extensive among the residents and officers of the army and navy.

Answer 7. I did not until I returned to Washington.

Answer 8. I answer affirmatively.

Answer 9. I first met Mr. Bartlett in 1849. I have never been associated with him on duty. My prejudices were very much excited against him in consequence of the rumors I had heard in 1850 or 1851. While in California I heard Bartlett spoken of as a very shrewd business man. My appreciation of his character was greatly against him from rumors I had heard from officers of the navy from time to time. Not from personal knowledge of these facts. Subsequent personal acquaintance and intercourse with Mr. Bartlett has not caused me to doubt his general character for honor, integrity, and truthfulness, nor confirmed the prejudices arising from the rumors mentioned.

Captain J. B. Montgomery was now sworn and examined:

Question 1, *by chairman.* Have you any knowledge, directly or in-

directly, touching the sale of a shawl by Mr. Bartlett, at Monterey, in 1846?

Answer. My first knowledge, to the best of my recollection, of the transaction, was conveyed in an official letter from certain officers of the Portsmouth to myself, of date October 16, 1846.

Question 2. Have you any knowledge, directly or indirectly, touching the discharge of Mr. Bartlett's duties as caterer of the ward-room mess of the United States ship Portsmouth?

Answer. None but such as was derived from the letter above alluded to.

Question 3. Have you any knowledge, directly or indirectly, touching the alleged illegal introduction, by Mr. Bartlett, into San Francisco, while in command of the Ewing, of certain merchandise by him?

Answer. None.

* * * * * * * * *

Here the chairman put the questions, as submitted by Mr. Bartlett in paper hereto annexed, marked Q, and to which the witness replied as follows:

Answer 1. I have known Mr. Bartlett since 1838, when he reported to me for duty (he being then a midshipman) on board the receiving-ship at Boston. Can't say how long he was with me, probably ten or twelve months. He subsequently reported to me as master (afterwards promoted to lieutenant) of the Portsmouth, at Portsmouth, New Hampshire, in the latter part of 1844, and continued to serve under my command until the discharge of the crew in 1848. I have known Mr. Bartlett from that time to the present, but have not been associated with him on duty, except as above stated.

Answer 2. Nothing ever came to my knowledge, except as stated in my answers to the first and second questions. I regarded the charges as of a most serious and blighting character. But Bartlett, who first brought it to my knowledge in a letter to me, enclosing the letter from a portion of the mess, met the imputations in so prompt and proper a spirit, expressing his desire and readiness to refute them, that I was led to hope that he would be able to do so. I never yielded my mind to any conviction of the truth of the allegations against Bartlett, nor have I to this day.

Answer 3. Affirmatively.

Answer 4. On the termination of our cruise in the Portsmouth, there were three or four officers on board the ship, against whom reports had been made at various times, all of which, except in Bartlett's case, had been settled. As our official relations were about to cease, I sent for those officers and handed them the papers, &c., referring to their respective cases, saying to them, in substance, "these are all the papers, containing anything to your disadvantage, that are in my possession; the cruise having terminated, I have no further use for them." I never expressed any judgment to Bartlett or any one else about the matter referred to in his interrogatory. The statement alluded to is, consequently, not correct.

Answer 5. I regard him as a competent and efficient officer in all respects. I know nothing, personally, against his character as a man.

Answer 6. No.
Answer 7. I do not.

WEDNESDAY, MAY 21, 1856.

The committee met and resumed the consideration of Mr. Bartlett's case.

Present: Mr. Mallory, chairman, Mr. Bell, Mr. Fish, Mr. Thomson.

Mr. James W. Bingham was now sworn and examined.

Question 1, *by chairman.* Have you any knowledge, directly or indirectly, touching the sale of a shawl by Mr. Bartlett, at Monterey, in 1846?

Answer. Not any.

Question 2. Have you any knowledge, directly or indirectly, touching the discharge of Mr. Bartlett's duties as caterer of the ward-room mess of the United States ship Portsmouth?

Answer. Not any.

Question 3. Have you any knowledge, directly or indirectly, touching the alleged illegal introduction, by Mr. Bartlett, into San Francisco, while in command of the Ewing, of certain merchandise by him?

Answer. I have.

Here the chairman put questions to witness, as contained in paper marked R, (hereto annexed,) submitted by Mr. Bartlett, to which witness replied as follows:

Answer 1. Said affidavit was made by me.

Answer 2. It is correct.

Answer 3. I know of none, and think I should know had there been any.

Answer 4. No.

Answer 5. As far as I ever knew or know, it was honorable in the highest degree. I was his partner for nearly three years, associated with him in business in San Francisco.

* * * * * * * *

The business was a general mercantile and commission business, and on our own account. We bought and sold provisions, groceries, and dry goods. This was in 1849, 1850, and 1851. The receipt, to which I testify, refers to boots, shoes, and sailors' clothing. They were imported from Valparaiso. The goods were imported on Mr. Bartlett's individual account. We sold them and passed the amount to his credit, charging him commission as we would any stranger. We had nothing to do with these goods but to receive them We received them as we would from any other stranger. This was the only instance I ever knew where Bartlett imported goods on his own account. The value of the goods was between $700 and $800.

The duties on them were not paid, according to the best of my recollection. They were entered as being intended for the United States seamen, and therefore free.

For interrogatories proposed to be propounded to E. H. Harrison, by Mr. Bartlett, and the action of the committee thereon, see S.

T and U and V are copies of interrogatories submitted by Mr. Bartlett to be propounded to Captain A. V. Fraser, and J. W. Revere, and Henry B. Watson, esqs., but, as they did not attend the committee before the examination of the case had been concluded, they were not examined. W and X are copies of letters from Captain Fraser to the committee, and the reply thereto.

THE MEMORIAL OF WASHINGTON ALLON BARTLETT, LATE A LIEUTENANT IN THE NAVY, SETTING FORTH THE SERVICES HE HAS PERFORMED IN THE NAVY AS AN EFFICIENT OFFICER, AND ASKING TO BE RESTORED TO HIS ORIGINAL POSITION ON THE NAVY LIST, WITH AN APPENDIX OF OFFICIAL DOCUMENTS.

To the Hon. The Senate and House of Representatives
Of the United States in Congress assembled:

The petition of Washington Allon Bartlett, a citizen of the State of Maine, and resident in the State of New York, late a lieutenant in the navy of the United States, respectfully representing:

That, on the 22d of January, in the year 1833, your memorialist was appointed a midshipman in the navy, having had some previous nautical training at sea; and was ordered, in April of that year, to commence his service at sea, by joining the Vincennes sloop-of-war for a cruise on the Pacific ocean, which cruise was extended to a period of four years and twelve days, your memorialist returning in the frigate Brandywine—Commodore Wadsworth's flag-ship—commanded by Captain D. Deacon, on the 12th May, 1837.

That from that period till July, 1839, your memorialist was variously employed "afloat and ashore," and in preparing for examination to the grade of passed-midshipman, which examination was successfully passed by your memorialist, July the 8th, 1839, your memoralist obtaining a high rank in his class, being warranted No. 7 in a class of thirty-two; and that then your memorialist was again ordered to sea for the "survey of southern harbors," and at the instance of the Navy Department your memorialist was continued upon surveying duty, mostly at sea, either on surveys specially ordered by acts of Congress, or in the department of the "Coast Survey," until November, A. D. 1844, when your memorialist was commissioned a lieutenant in the navy, and ordered to the sloop-of-war "Portsmouth," Commander John B. Montgomery, for another cruise on the Pacific ocean, which cruise your memorialist successfully performed, participating in all the incidents of the war in Mexico in which the Pacific squadron took part, and which obtained for the United States the Territory of California, and the subjugation of the western coast of Mexico; which cruise of three years and six months was ended on the 15th day of May, A. D. 1848, or the close of the war.

Your memorialist further represents, that in November of the same year he was selected to command the United States schooner "Ewing," for an expedition into the Pacific; and again your memorialist passed Cape Horn, and reported his command off San Francisco, ready to

commence the survey of the western coast of the United States, then commanding (August, 1849) the attention of the whole commercial world; and that Lieutenant Commanding William P. McArthur, assistant in the coast survey, having charge of the hydrography of the western coast, (arriving out in September,) being then ready to proceed with the work, your memorialist seconded with all possible zeal the ardent efforts of the commandant of the expedition, so that before the close of 1850 (being well sustained by the officers engaged on the work) your memorialist was enabled to return and report to the distinguished chief of the coast survey, that notwithstanding all the difficulties, almost insurmountable, under which the expedition had suffered from the excessive temptations to desert, a partial mutiny of the crew, (and other causes which paralyzed every branch of the public service in that region,) and the exploration of a coast but little known, with the survey of the Columbia river, (up to that period known only to mariners by its difficulties and disasters, where two United States vessels-of-war had been totally lost;) and that a good practicable, serviceable, and reliable chart of the entire coast of Oregon and California, from the Columbia river to Monterey, including the entrance to San Francisco, with a detailed survey of the mouth of the Columbia from sea to a point fifteen miles within the bar, had been made; which, on being presented to the superintendent, A. D. Bache, L.L.D., was approved, and published to the world, previous to the end of the year, as the joint production of the late lamented Lieut. Com'g Wm. P. McArthur and your memorialist.

And your memorialist avers, that for the successful accomplishment of that work, so laborious and dangerous in its execution—which so fully, completely, and safely opened the navigation of the Columbia river, producing results so incalculable in value to that heretofore sealed territory, and our general commerce—obtained for your memorialist, as the associate of McArthur, (who died from exposure on the work before he could see the published results of our labors,) high commendations from the superintendent of the coast survey, Professor A. D. Bache, L.L.D., from the Navy Department, from the committees of Congress,(which passed increased appropriations for the continuance of the survey of the western coast,) from the citizens of Oregon and California, and the commercial interests of the country.

Your memorialist avers, that he only retired from the command of the work now tendered to him—consequent upon McArthur's decease, because your memorialist had been serving on the Pacific for six consecutive years—in all ten years and a half in that sea—and his family now needed his personal attention.

In this important work, strictly professional and creditable to the navy, your memorialist had at all times used his utmost zeal and abilities to sustain the declining health of the chief of the expedition, and prosecute the work to a successful result; that result is before the world; its value has been everywhere admitted. And your memorialist further says, that being detached from the coast survey, July, 1832, your memorialist, with the full concurrence of the honorable the Secretary of the Navy, was employed by the Treasury Department to proceed to Europe as "special agent" under its orders, with large powers to con-

tract for and superintend the construction of the *Fresnel lens lights*, ordered by Congress to be illumininated on the western coast of the United States; and that having completed that duty, and closed his disbursement accounts on the books of the treasury, to the entire satisfaction of the honorable the Secretary of the Treasury, in February, 1855, your memorialist was again ordered to sea as a lieutenant, and served cheerfully and faithfully as lieutenant, and as first lieutenant, and executive officer of the flag-ship of the African squadron, up to the 28th day of October last, when your memorialist received (being then on board of said flag-ship at the Cape de Verde islands,) a copy of the following communication, which the honorable the Secretary had addressed to the wife of your memorialist:

"NAVY DEPARTMENT, *September* 20, 1855.

"MADAM: Your letter of the 18th instant has been received. The Board of Naval Officers, recently convened in Washington in accordance with the law, merely reported the names and ranks of officers who, in their judgment, came within the provisions of the recent act of Congress, but not the facts or the grounds upon which their action was based. No charges were preferred against any officer. You will perceive, therefore, that I am unable to comply with your request to know what the charges were against Lieutenant Bartlett.

"I am, very respectfully, your obedient servant,

"J. C. DOBBIN.

"MRS. WASHINGTON BARTLETT, *New York*."

Thus ended the service of your memorialist. The whole period of service of your memorialist in the navy was *twenty-two years and nine months*, of which *thirteen years* and *nine months* have been passed in *actual sea service*, seven years on "other duty," and only two years "unemployed;" but this time rated as "unemployed" was not passed in idleness, but in the prosecution of the study of the Spanish and French languages, the political history, laws, and decisions of the United States, and commercial, admiralty, and international law, the better to prepare your memorialist for the intelligent performance of those duties which subsequent years and higher rank should impose upon him.

And your memorialist further says, that while the conquest and pacification of California was in progress, your memorialist being then a lieutenant of the "Portsmouth," and having assisted in the taking possession of the northern department of California, was called by Commander Montgomery, commandant of the northern department, *by the election of the people*, (at the first election held under our flag in the Territory,) and by the approval and full concurrence of Commodore the Hon. Robert F. Stockton, governor and commander-in-chief of the Territory, to the performance of functions of civil office and administration, of high trust and responsibility, to wit: To the office of the chief magistracy of the town and district of San Francisco, (September, 1846,) and judge of first instance; and by appointment to the office of "collector" and superintendent of the port, and judge in admiralty in all maritime cases occurring in the northern department. And your memorialist confidently avers, that he acquitted himself in

these various offices to the entire satisfaction of our government and the community, whether native or foreign, who flocked to that port, and ever received, and continues to receive, high praise for this service from the various chiefs who commanded the department, and the governor general, who were best informed of the severity and value of the labors of your memorialist; and your memorialist only surrendered the charge of these varied duties when the administration of the government of the Territory fell into the hands of the late General Kearny, and the naval forces proceeded to the occupation of Lower California, Sonora, and the coast of Mexico proper.

And your memorialist also avers, that it was in greatful remembrance of these well-performed services, in the early history of our occupation of that city and territory, since so famous as the great commercial wonder of our country, and the salutary and intelligent basis upon which the various archives were established, that in 1850 your memorialist was invited by the "bar" of San Francisco to present himself for examination as a counsellor of the supreme court of the State, and was duly qualified and commissioned as such; and your memorialist avers that this mark of consideration, esteem, and reward for civil service—*yet strictly a necessity of naval conquest*—was a compliment paid to his naval commission.

And your memorialist declares, that during his whole period of service he has done his whole duty, and ever been "*efficient*" both "ashore and afloat;" and that, a tno period of that service has any charge or complaint ever been brought against him by any *commander*, *captain*, or *commander-in-chief*, or the *Navy Department;* that your memorialist has never been made the subject of a naval court-martial or court of inquiry; ever arrested, suspended or reprimanded by any superior officer, since he has had the honor to hold an appointment or commission in the navy.

And your memorialist knows that he has ever had, and still has, the respect, confidence and esteem, as an officer and gentleman, of every *commander*, *captain*, or *commander-in-chief* under whom he has had the honor to serve in any capacity; the Secretaries of the Navy; the superintendent of the Coast Survey; ex-Governor General Joseph Lane, who was governor of Oregon while your memorialist served on the coast of that Territory, and the Hon. ex-Senator Stockton, late commodore and governor of California, than whom the army or navy never had more gallant and accomplished chieftains.

And your memorialist refers to the annexed documents, (A,) Appendix, to show in what manner your memorialist was held and esteemed as an *efficient* officer, by all his superior and junior officers, and the petty officers and crew of the present flag-ship of the African squadron, where your memorialist held the responsible and delicate post of first lieutenant and executive officer of a cruising frigate, down to the 28th October last, and where your memorialist would still be on "*sea service*," but for the action of the late "board."

But your memorialist has to state, that all this has availed him nothing to sustain him in his commission as an "efficient" officer of the navy; for by the act of Congress of the 28th February, A. D. 1855, entitled An act to promote the efficiency of the navy, a board of

officers was created, which "board," acted upon by some influence or allegations unknown to your memorialist and to the Navy Department—(see the letter of the 20th September, before quoted)—has recommended to the President of the United States that the name of your memorialist should be "stricken from the rolls," and in accordance with such reccommendation or opinion, unaccompanied by charges, facts, or proofs of any kind to direct the judgment of the executive, the name of your memorialist has been stricken from the rolls; and the information, so astonishing to your memorialist, reached him when in the full performance of his duties on the coast of Africa. Your memorialist, with the "regrets," and bearing with him the highest commendations of his commanders, brother officers, and crew, was permitted to return to the United States.

Your memorialist will not detain the Congress of the United States with any argument or proof of the baneful effects of this law upon the justice and sympathies of the country for its navy, and its still more baneful results upon the chivalry and *esprit du corps* of a service which has never had its escutcheon tarnished before the enemies of the country, but has now received a staggering blow from the mistaken zeal of its friends, urged on by a few within its own bosom, till an inquisitorial court has been created, and acted in a manner which shocks every sentiment of justice inherent in a free people.

It is sufficient for your memorialist to say, that he believes, (and in this opinion is sustained by the best legal talent of the country,) that the law itself is clearly within the description of "acts" so ably described by our great commentators, Marshall, Story, and Kent, in the great text-books of the law as ex post facto, and therefore unconstitutional; but if not unconstitutional, and therefore justly upon the statute as a measure of naval reform and progress, the more than extraordinary manner in which it has been executed, the department instructing the board that its action was only "advisory," and the President, that the finding of the board was "mandatory," or to that effect; hastily, inconsiderately, without notice to parties, without any pretence of having been guided by rules of evidence known to every schoolboy in the land, and in a manner so utterly repugnant to the great principles of civil liberty, or the laws of courts-martial, which guarantee that the accused shall have the RIGHT to confront his accusers and witnesses, and meet them face to face; that the law and its action is obnoxious to the great majority of those who have been *temporarily* benefitted by it; that without any of these *rights* being considered as attaching to the holder of an honorable commission, your memorialist has been assaulted in the dark, stricken down in secret, and has appealed in vain to know why and wherefore. See the annexed correspondence with the president of the board.

In that great charter of our liberties to which the names of John Hancock and Josiah Bartlett are attached, who, with Charles Carroll of Carrollton, and their immortal *associates*, "pledged their lives, their fortunes, and their sacred honors to maintain," leaving it as an imperishable legacy of honor and renown to their descendants, it is charged that one of the *high crimes* which England had committed against her loyal colonies was the transportation of colonial citizens

beyond sea, and putting them under trial, where they had no *counsel*, no *documents*, no *witnesses*, to sustain them in defence. This law and its execution has been less merciful, is less defensible, than those tyrannical acts—for the country furnished citizens with honorable commissions, and sent them abroad in its service to uphold the honor of the country, and cause her flag to be respected on dangerous seas and sickly coasts; and, as a reward for such service, well performed, and proudly stated to the world as the gallant conduct of American officers, "Rolando" and "Maffit" are "*furloughed;*" Maury is "retired;" "Stevens," "Walbach," "Sterrett," "Shaw," and scores of other meritorious and "efficient" officers, who are proving their efficiency at this moment, are retired, furloughed, or "dropped."

Therefore your memorialist appeals to the Congress of the nation to be heard in his defence, and his commission and original position in the navy—for which he has battled the enemies of his country, the storms of the ocean, and the pestilence of sickly coasts, (yet, through the mercy of God, possessed of a constitution and health which fits him for every duty, ashore or afloat)—shall be restored to him.

And your petitioner, as in duty bound, will ever pray.

WASH'N ALLON BARTLETT.

APPENDIX.

Letter from Commander F. B. Ellison, United States navy.

HEMPSTEAD, LONG ISLAND, *January* 17, 1856.

DEAR SIR: In reply to your request that I would state my opinion of your efficiency as an officer, and your deportment as a gentleman, during our recent association on board the "Jamestown," where you served under my command, I with great pleasure say, that in every particular, as a zealous and capable officer, and a well-informed, intelligent gentleman, I regarded you as most exemplary. Commodore Crabbe frequently expressed himself to me in very warm terms of you as a highly accomplished officer, and like expressions were made from all your messmates in the ward-room, showing a uniformity of opinion throughout the ship.

Sincerely trusting that the error which seems to have been made in your case may speedily be rectified, and that you may be honorably restored to your former position in the navy,

I am, very truly, your obedient servant and friend,

FRAS. B. ELLISON,
Commander United States navy.

W. A. BARTLETT, Esq., *Washington, D. C.*

Testimonial of Commodore Crabbe, United States navy.

UNITED STATES SHIP JAMESTOWN,
Porto Grande, October 23, 1855.

SIR: I have received your letter of this day's date, containing a copy of a letter from the honorable Secretary of the Navy to Mrs.

Bartlett, [the same published in the body of the memorial,] in relation to your retirement from the navy of the United States.

Although I have not received anything official from the department upon the subject, yet the honorable Secretary's letter to Mrs. Bartlett, and the reasons set forth by yourself, will no doubt justify me in relieving you from further duty on board this ship. In doing so, however, I cannot avoid saying that I deeply regret the loss of your services. Your gentlemanly and officer-like bearing, whilst under my command, has uniformly met my warmest approbation.

I am, with great respect, your obedient servant,

THOMAS CRABBE,

Commander-in-chief of United States naval forces, coast of Africa.

Lieutenant W. A. BARTLETT,

United States ship "Jamestown."

Testimonial of Lieutenant Commanding James F. Armstrong.

UNITED STATES FLAG-SHIP "JAMESTOWN,"

Porto Grande, St. Vincent, October 23, 1855.

DEAR SIR: In forwarding you the enclosed letter from Commodore Crabbe, relieving you from further duty in this ship, I beg leave to assure you of my deepest regret for the cause that has produced it, and for the interruption of an intercourse and association always confidential, harmonious, and friendly.

I shall ever esteem you in your character as an officer and gentleman, and in parting from you tender you my sincerest wishes for your restoration to the service and for your future welfare.

Very respectfully, your obedient servant,

JAS. FRANCIS ARMSTRONG,

Lieutenant Commanding.

Lieutenant WASH'N A. BARTLETT, *United States ship Jamestown.*

Testimonial of all the Commissioned Officers of the United States flag-ship Jamestown.

PORTO GRANDE, ST. VINCENT, *October* 24, 1855.

DEAR SIR: We entertain too high an appreciation of your character as a gentleman and an officer, and too warm a regard for you as a messmate and friend, to allow you to leave us without saying to you, in the sincerity of our hearts, that we deeply regret that you are about to part from us, and, above all, the cause that takes you away.

In the difficult and responsible relation that you have sustained to us, as executive officer of the ship, you have ever, whilst discharging your duties with fidelity, borne yourself towards us with the utmost frankness, conciliation, and courtesy. And, in the more intimate and kindly relation, as a member of the little society that we form amongst ourselves, and which can subsist in harmony only by mutual

cultivation of friendly feelings and the practice of friendly offices, you have endeared yourself to us by your uniform amiability of disposition, and by the desire you have ever evinced to cherish the most cordial intercourse with us all.

We therefore beg to assure you, that in parting from us you are taking leave of those who will ever remember you with pleasure, and who, whatever fortunes may betide you, will always continue your well-wishers and friends.

Ever, very truly, yours,

GEO. CLYMER, *Fleet Surgeon, ranking with Commander,*
T. H. PATTERSON, *Lieutenant,*
EDWARD N. BARNETT, *Lieutenant,*
T. M. TAYLOR, *Purser, (rank of Commander,)*
JULIAN MYERS, *Lieutenant,*
SAM'L RICH'D SWANN, *Assistant Surgeon,*
JOHN L. HEYLEN, *Commodore's Secretary,*
JNO. E. HART, *Acting Master and Lieutenant,*
JAS. M. BRADFORD, *Acting Lieutenant,*
CHAS. W. THOMAS, *Chaplain.*

Lieutenant WASHINGTON A. BARTLETT.

Letter from the Junior Officers of the Jamestown.

UNITED STATES SHIP JAMESTOWN,
Porto Grande, St. Vincent, October 24, 1855.

SIR: You are about to return to your home; in so doing the members of the steerage feel it their duty to express to you their deep regret, and their sincere gratitude for the extreme kindness with which you have universally treated them, during the time they have had the pleasure of being under your command. You may be assured that, after your leaving us, you will ever be cherished in our memory with feelings of the highest regard and esteem in your character as an officer and gentleman.

Sir, we bid you, with sorrow, a hearty farewell; with many wishes for your future welfare and happiness,

Believe us, very respectfully, your obedient servants,

N. B. CONCKLIN, *Master's Mate,*
C. W. LAWRENCE, *Master's Mate,*
VAL HALL VOORHEES, *Master's Mate,*
O. N. HENCKEL, *Master's Mate,*
H. B. JOHNSON, *Captain's Clerk.*

Lieutenant W. A. BARTLETT, *United States navy.*

Letter from the Warrant Officers of the United States ship Jamestown.

PORTO GRANDE, ST. VINCENT, *October* 26, 1855.

SIR: It is with feelings of the most heartfelt sorrow that we address these few lines to you.

You are about to return to your home, and we, as officers, who have taken pleasure in being under your command, cannot think of your leaving us without expressing our thanks for the gentlemanly manner in which we have been treated by you.

Your name may ever live fresh in our memories.

Hoping that you may succeed in all your undertakings, we remain, yours, truly,

WILLIAM COPE, *Gunner*,
JOHN MCKINLEY, *Boatswain*,
JOSEPH R. SMITH, *Carpenter*.

Lieutenant W. A. BARTLETT, *United States navy*.

Testimonial from the Petty Officers and Crew of the "Jamestown."

UNITED STATES SHIP JAMESTOWN,
Off Porto Grande, October 29, 1855.

SIR: In the discharge of my duties as sailmaker of this ship, I have learned much of the disposition of the crew, and the feeling they have toward you, particularly during the time you have served as executive officer, and beg leave to state that they, being aware of your intended departure for the States, have expressed a wish to me, and through me, to testify their regret that you have occasion to leave them prior to the end of the cruise.

Since I have been attached to the navy I have seen other officers who have gained the esteem of their ship's company, but never to such a degree as you have from the hardy sons of Neptune comprising this ship's crew. Your capabilities as a lieutenant, and your bearing as an officer and gentleman, have won their admiration, and they say they cannot let you depart without this token of their gratitude and their esteem.

Very respectfully, yours, &c.,
WM. N. MAUL, *Sailmaker*.

Approved—

WM. PLUMMER, *Captain Forecastle*.
JAMES YOUNG, *Captain Fore-top*.
HENRY P. GRACE, *Captain Main-top*.
CHARLES STEWART, *Captain Mizen-top*.
THOMAS W. MCCREADY, *Captain After-guard*.
THOMAS KITCHEN, *Captain Hold*.
DAVID ESBECK, *Signal Quartermaster*.
GEORGE POTTER, *Boatswain's Mate*.
WILLIAM THOMAS, *Sailmaker's Mate*.
JOHN H. LOVELESS, *Carpenter's Mate*.
DANIEL HUSSEY, *Gunner's Mate*.
JOHN D. GORMAN, *Master-at-arms*.
CHARLES SWANSON, *Yeoman*.
JAMES MCFARLAND, *Cooper*.

P. S.—They all wish to sign and approve, but as it would occupy too much time and too large a space, I could only permit one from each part of the ship, who bears testimony as to the sentiments of the gangs to which they are attached.

W. N. MAUL.

UNITED STATES SURVEYING SCHOONER "EWING,"
San Francisco, October 12, 1850.

SIR: You will proceed to Washington by the first opportunity, carrying with you the results of our labors for the past season.

Immediately on your arrival at Washington you will report to the superintendent of the United States Coast Survey, and lay before him our works and reports.

You will also inform the superintendent, in detail, the peculiar situation of the country, and the wants of the survey on this coast.

It only remains for me to thank you for the zealous assistance you have afforded me since your attachment to this vessel, and to wish a happy reunion with your family and friends.

I am, respectfully and truly, yours,

WM. P. McARTHUR,
Lieut. Comd'g and Assisstant U. S. Coast Survey.

W. A. BARTLETT, *Lieutenant.*

Reported, Willis Station, November 26th, 1850.

A. D. BACHE.

Letter from the Hon. John Y. Mason, ex-Secretary of the Navy, to Hon. James Guthrie, Secretary of the Treasury.

PARIS, *September* 2, 1854.

DEAR SIR: Lieutenant Bartlett, of the United States navy, is about leaving Paris, on his return to the United States. It gives me great pleasure to bear my testimony to the care and vigilance with which this gentleman has performed his responsible duties since I have been here, and to express my admiration of the splendid lights which have been manufactured under his supervision for the coasts of the United States.

I do not believe that there are in the world superior mechanical structures for the safety of commerce than those which have been prepared here under the superintendence of Mr. Bartlett. The chief credit is unquestionably due to the faithful and skillful manufacturers, but no small share is, in my judgement, due to Mr. Bartlett, who has displayed zeal, industry and intelligence in the performance of his duties. I hope that you will not consider me obtrusive in thus expressing my admiration of the lens lights prepared here for the exposed and dangerous coasts of my country.

I have the honor to be, most respectfully,

J. Y. MASON.

Hon. JAMES GUTHRIE,
Secretary of the Treasury, Washington.

H STREET, WASHINGTON, D. C.,
January 16, 1856.

SIR: I acknowledge the receipt of your letter.

The board of which I was the senior officer, and of the action of which you complain, having some time since completed the duty assigned it, has been, as I suppose you know, dissolved by the authority by which it was appointed; and I am of the opinion that no individual of its late members is competent to speak for it in relation to the matters which came before it, or of the gounds on which any of its decisions were made.

No inference, either favorable or unfavorable, should be drawn from my conduct towards any person whose name may have been embraced in the report of the board, as to my individual opinion in relation to him, or as to my vote in his case; it has always been my endeavor to keep my social relations free from influence by anything of an unpleasant nature that may occur in the discharge of my official duties.

With due respect, I am, &c., &c.

W. B. SHUBRICK.

WASHINGTON A. BARTLETT, Esq.

Testimonial of Commodore E. A. F. Lavallette on the services of Lieut. Bartlett in the Pacific Squadron.

PHILADELPHIA, *January* 22, 1856.

DEAR SIR: I have received your letter of the 22d instant, in which you state, that "while absent from the country, serving as first lieutenant of the flag-ship of the African squadron, it has pleased the late 'Navy Board' to present my name to the President to be stricken from the rolls as lieutenant in the navy.

"I have had the honor to serve under your command as a midshipman, and again as lieutenant, commanding the armed prize brig Argo in the Gulf of California, and in the attack on Guaymas, and its occupation. On that occasion you did me the honor to assign me to the most advanced post, on the night previous to the attack, out of supporting distance of the guns of the squadron, and out of sight, being covered by the island which separated me from the squadron.

"How did I bear myself on that occasion? Did I meet your expectations or not?

"From your knowledge of me, my abilities and acquirements, was or was I not an efficient officer of the Pacific squadron during the Mexican war?"

In answer, I have to state, that your foregoing statements of our operations in the Gulf of California are correct in every particular. Your conduct on that occasion not only met my approbation, but the activity, energy, and skill which you displayed in getting your gun landed, merited—and the effect which it produced, by your management, upon the works of the enemy entitled you to—the highest praise.

Your abilities and acquirements I consider quite equal to any of your grade, and very superior to very many of them. I certainly viewed you as an efficient officer of the Pacific squadron.

I am, respectfully, your obedient servant,

E. A. F. LAVALLETTE.

WASH'N A. BARTLETT, Esq.,
Late Lieut. U. S. Navy, Washington City, D. C.

Correspondence between the Committee and Mr. Bartlett during the investigation of his case.

DEXTER'S HOTEL, WASHINGTON,
March 7, 1856.

SIR: Having learned from your committee that you are to take into consideration my memorial to-morrow at 12 o'clock, I have to request that you will be pleased to summon before you the following named gentlemen, believing that their testimony may become necessary to a complete knowledge of facts, viz: Captain J. B. Montgomery, United States navy, corner I and 15th street, Washington; Professor A. D. Bache, Coast Survey; Hon. Albert Smith, Ebbett House; Lieutenant Richard Forrest, United States navy, Washington, and Henry B. Watson esq., late captain United States marine corps, North Carolina; should circumstances demand the presence of others, I shall name them to the honorable chairman of the committee.

Very respectfully, sir, your obedient servant,

WASHINGTON A. BARTLETT.

S. R. MALLORY, Esq.,
Chairman Naval Committee.

SENATE NAVAL COMMITTEE ROOM,
March 11, 1856.

SIR: I am instructed by the Naval Committee of the Senate, to whom was referred your memorial upon the subject of your dismissal frow the navy, to notify you that they have the same under consideration; that a member of the late Naval Board is now before them to disclose, upon oath, the reasons which induced the action of the board in your case, and a recommendation of your dismissal by a vote of 14 to 1, and to say to you that you may attend and participate in the examinations of the action of the board in your case at your pleasure.

C. W. DOWNING,
Clerk Committee Naval Affairs.

W. A. BARTLETT, Esq.

SENATE NAVAL COMMITTEE ROOM,
March 25, 1856.

SIR: I am instructed by the Senate Committee on Naval Affairs to inform you, that you are at liberty to examine the evidence before it in your case, in the investigation of which you personally participated to a considerable extent; and to produce each explanations touching the subject of their inquiries as to you may seem expedient.

Should you desire to examine any witnesses who are subject to the order of the Navy Department, the committee will cause them to attend for this purpose. Respectfully, &c.,

C. W. DOWNING,
Clerk Com. Naval Affairs of the Senate.

W. A. BARTLETT, Esq.

DEXTER'S HOTEL,
Washington, March 26, 1856.

SIR: I have this morning received the communication of yesterday's date made to me by Mr. C. W. Downing, clerk to the Committee of Naval Affairs of the Senate, in which it is stated that "I (he) am instructed by the Senate Committee on Naval Affairs to inform you, that you (I) are at liberty to examine the evidence before it in your (my) case, in the investigation of which you (I) personally participated to a considerable extent; and to produce such explanations touching the subject of their inquiries as to you (me) may seem expedient." And also should "you (I) desire to examine any witnesses who are subject to the order of the Navy Department the committee will cause them to attend for this purpose." And in reply, in order that I may meet the views of the committee, as above expressed, I have to request that your clerk may be directed to furnish me with a complete copy of all the testimony or documents in my case, in order that I may be able to furnish a list of the witnesses and obtain the documents requisite to present to the committee in the case.

Very respectfully, your obedient servant,

WASH'N A. BARTLETT.

Hon. S. R. MALLORY,
Chairman Naval Committee, Senate.

SENATE NAVAL COMMITTEE ROOM,
March 31, 1856.

SIR: In reply to your note of 26th instant, addressed to the chairman of this committee, I am instructed by the committee to inform you that the duties of clerk of the committee are such that he would not have time to furnish you with copies of the evidence taken in your case, but you are at liberty to copy it, or have it copied in the committee room, while the clerk is present.

Respectfully, &c.,

C. W. DOWNING,
Clerk Com. Naval Affairs of the Senate.

W. A. BARTLETT, Esq.

WASHINGTON, *April* 1, 1856.

SIR: The Naval Committee having permitted the testimony taken in my case to be furnished me, as I requested in my note of the 26th ultimo, I trust it will not be regarded as a fit subject for senatorial reference until I have had an opportunity to reply to it, as I pledged myself to do in my letter of the eleventh March last.

Your obedient servant,

WASHINGTON A. BARTLETT.

To the CHAIRMAN *of the Naval Committee, U. S. Senate.*

SENATE NAVAL COMMITTEE ROOM,
April 28, 1856.

SIR: I am instructed by the Committee on Naval Affairs of the Senate to inform you that the committee will be prepared to report upon your case on *Monday next*, and that any testimony you desire to produce before the committee must be presented on or before *Thursday* next.

Respectfully, your obedient servant,

C. W. DOWNING,
Clerk Committee Naval Affairs.

WASHINGTON, *April* 28, 1856.

SIR: I have just received a note of this date from the clerk of your committee, stating that he was instructed to inform me "that the committee would be prepared upon your (my) case on Monday next, and that any testimony you (I) desire to produce before the committee must be presented on or before Thursday next."

All the testimony taken before you, as I understand, was written down. After it had been concluded, on my application, you permitted the clerk to furnish me with a certified copy thereof; this was done on the 8th day of April. Since that period I have been busily engaged in collecting my evidence and preparing my reply. Considering the nature of the charges and the remoteness of the localities where the transactions occurred out of which some of the charges arise, the time which I have consumed is brief indeed. But by great industry I have the pleasure now to say that my reply is completed.

For the purpose of facilitating the examination by the committee of the numerous documents, &c., which make a part of it, I have placed the whole in the hands of the printer, and will be enabled to furnish it to the committee on an early day next week.

I trust therefore I will not be considered as asking from the committee too great a favor, in a matter where my personal character is to be vindicated, that they postpone the consideration of this matter until Thursday week.

With great respect, I have the honor to be your obedient servant,

WASHINGTON A. BARTLETT.

Hon. S. R. MALLORY,
Chairman Naval Committee, Senate.

WASHINGTON CITY, *May* 7, 1856.

SIR: I transmit herewith my answer to the charges and testimony before your committee, on the subject of my memorial.

I trust that it will be found to be conclusive; but should there remain any doubt upon the mind of the committee, I stand prepared, whenever or wherever opportunity shall be afforded—under those safe-guards which the law of the land has prescribed for the protection of the innocent—to "make good my defence."

In case this course should be authorized and required, I beg leave to append a list of my witnesses.

I am, respectfully, &c.,

WASH'N A. BARTLETT.

Hon. STEPHEN R. MALLORY,
Chairman of the Naval Committee of the Senate.

For list of witnesses see pages 51 and 52 of printed document transmitted herewith. W. A. B.

SENATE NAVAL COMMITTEE ROOM, *May* 9, 1856.

SIR: In reply to your letter of 7th instant, I am instructed by the Committee of Naval Affairs to say, that the committee will confine its report to the facts (and their opinion thereon) involved in the three following transactions:

1st. The sale of a shawl at Monterey in 1846.

2nd. Your conduct in the discharge of your duties as caterer of the ward-room mess in the Portsmouth.

3rd. The introduction of certain goods at San Francisco, while you were in command of the Ewing.

If you wish to present before the committee witnesses to be examined respecting these facts, it will be glad to defer the report on your memorial for that purpose for a reasonable time; and if any of them be within reach of orders from the Navy Department, they will be given on your application.

Respectfully, your obedient servant,

C. W. DOWNING,
Clerk Committee of Naval Affairs.

WASHINGTON, *May* 10, 1856.

SIR: I have to acknowledge the receipt of a letter from the clerk of your committee, dated on yesterday, informing me that your committee "will confine its report to the facts (and their opinion thereon) involved in the three following transactions:

"1st. The sale of a shawl at Monterey in 1846.

"2d. Your conduct in the discharge of your duties as caterer of the ward-room mess of the Portsmouth.

"3d. The introduction of certain goods into San Francisco while you were in the command of the Ewing."

I have already had the honor of exhibiting my explanations, and such proofs as were within my reach at the time, of the entire falsity not only of these allegations, but also of those which charged me with "*speculating on a private library, and meanly soliciting subscriptions from individuals, some of whom it was well known would not continue in the ship longer than her outward passage, and among whom was a public functionary,*" and with *presenting an account to the Treasury Department for my expenses while at Paris, which were not admitted until altered, and which contained charges for items deemed discreditable to me as an officer.*

As these two last charges are not included in the present notification, I conclude that the committee are already entirely convinced of their entire falsity, and will do me the justice *so to declare when the proper time arrives.*

In reference to the items contained in the present notification, I have no further explanation to make. The witnesses within my reach I have appealed to, and copies of their statements and letters in reference to the second and third specifications are before you. I am ready to produce the originals and verify them. If the committee would send subpœnas to these witnesses, I feel very confident they would attend, or if they consider they have not the power to use this means, which is ordinarily regarded as necessary to the investigation of such a subject, an informal invitation on the part of the committee would probably secure this end. I shall myself address these gentlemen, and use my influence to procure their attendance at as early a day as possible. The gentlemen referred to are Captain J. B. Montgomery, United States Navy, Washington; Henry B. Watson, esq., late captain United States marine corps, Aline Park, near Smithfield, Johnston county, North Carolina; Joseph W. Revere, esq., late lieutenant United States navy, Morristown, New Jersey; James W. Bingham, 88 Wall street, New York; E. H. Harrison, esq., Girard House, Philadelphia; Professor A. D. Bache, Washington; Captain A. V. Fraser, United States revenue service, Treasury Department; A. C. Rhind, late lieutenant United States navy, Stapleton, Staten Island, New York; Executive Officer Ewing; Commodore T. Ap Catesby Jones, Washington; Cadwalader Ringgold, commander, United States navy, Washington. The gentlemen now in Washington will appear whenever notified, and as soon as others may arrive I will notify the committee thereof.

In reference to the first item, as to the sale of the shawl, the only witness that could be produced is the lady referred to in my printed "reply," who is now at San Francisco.

As to the third item, I am somewhat at a loss, as the inquiry is stated to refer "to the *introduction* of certain goods at San Francisco, while in command of the Ewing." In my reply I have admitted that I did introduce goods as is here stated. I presume, however, from the evidence, that something more than this is intended by the com-

mittee, for they surely cannot intend to investigate the mere fact of introducing goods. I understood the charge to be distinctly made that I smuggled those goods and used the Ewing to convey them. This I have pronounced false, and the witnesses already referred to have so declared it, and will so restate it when called before you.

I am, respectfully, your obedient servant,

WASH'N H. BARTLETT.

Hon. S. R. MALLORY,
Chairman Naval Committee, United States Senate.

SENATE NAVAL COMMITTEE ROOM, *May* 12, 1856.

Sir: In reply to your letter of 10th instant, (which was received by the chairman of the committee to-day,) I am directed by the committee to say, that they desire to be informed, for the purpose of avoiding unnecessary delay, as to which of the three transactions, specially referred to in their letter to you of 9th instant, each of the witnesses named in your letter of the 10th instant (and received to-day) is expected to testify.

Respectfully,

C. W. DOWNING,
Clerk Committee of Naval Affairs, Senate.

WASH'N A. BARTLETT, Esq.

DEXTER'S HOTEL, WASHINGTON, *May* 12, 1856.

SIR: The letter of your committee of this day has just been received, desiring "to be informed, for the purpose of avoiding unnecessary delay, as to which of the three transactions, specially refered to in (your) their letter to you (me) of the 9th instant, each of the witnesses named in your (my) letter of the 10th instant (and received to-day) is expected to testify."

In my letter of the 10th instant, I gave to the committee the names of the witnesses who were "within my reach," and whose testimony, in my judgment, would be sufficient to satisfy them as to the second and third specifications in their letter of the 9th, and who would probably appear if summoned or invited by you. I did not arrange the witnesses under the two heads or specifications, *as nearly all of them* were refered to, *in my printed letter, in connexion with the specific facts.* I lose no time, however, in complying with your request of this morning.

On the second specification—Henry B. Watson, esq.; Joseph W. Revere, esq.; Captain J. B. Montgomery, U. S. N.

On the third specification—E. H. Harrison, esq.; James W. Bingham, esq.; A. V. Frazier, esq., captain revenue service; A. C. Rhind, esq.; Prof. A. D. Bache; Commodore Thos. Ap Catesby Jones; Commodore Cadwallader Ringgold, U. S. navy.

As already stated in reference to the first specification, the only person who could explain the transaction as to the falsely alleged sale of the shawl, is a lady who was present at the time of the transaction, whose name I have not heretofore mentioned, Mrs. Thos. O. Larkin, of Monterey, or San Francisco.

I have the honor to be, sir, your obedient servant,

WASH'N A. BARTLETT.

Hon. S. R. MALLORY,
Chairman Naval Committee, Senate.

DEXTER'S HOTEL, WASHINGTON, *May* 13, 1856.

DEAR SIR: Should there be any communication for me from the Naval Committee to-day, *to-morrow*, or *next day*, you will please address me care of *Hon. P. Phillips, Washington*, as I am compelled to be out of the city *Wednesday* and *Thursday*, but shall be present on *Friday morning*.

You will please mark on the cover of any such communication, "*from Naval Committee.*"

Yours, very truly,

W. H. BARTLETT.

C. W. DOWNING, Esq., *Clerk Naval Committee, Senate.*

SENATE NAVAL COMMITTEE ROOM, *May* 16, 1856.

SIR: The meeting of the committee in your case has been postposed until Monday next, (19th instant,) at 10 o'clock, a. m., (in consequence of your absence from the city,) at which time you may attend, if you think proper.

The gentlemen mentioned in your last letter to the committee are expected to be present as witnesses.

Very respectfully, your obedient servant,

C. W. DOWNING,
Clerk Committee on Naval Affairs.

WASHINGTON A. BARTLETT, Esq.

WASHINGTON, *May* 20, 1856.

SIR: On the 18th instant, I had the honor of enclosing to your committee copies of interrogatories to be propounded to Professor A. D. Bache, Commodore Ap Catesby Jones, Captain J. B. Montgomery, Commander Ringgold, Henry B. Watson, late captain United States marine corps, Joseph W. Revere, late lieutenant United States navy, A. C. Rhind, late lieutenant United States navy, Captain A. V. Frazer, United States revenue service, with the request "*that each may*

be distinctly propounded to each one, and the answer written down in the precise language of the witness." I delivered these papers in person to the committee, at its session on yesterday, and then understood you to say that you regarded many or most of these interrogatories as irrelevant, and that the committee would only ask such questions as they thought relevant. The interrogatories may not have been drawn with great legal precision; but as they were very limited in number, and mere irrelevancy could injure no one, I had hoped that in so serious a matter as this my suggestions and wishes would have been complied with. However, while the committee take such course as they think proper, I will continue to act in the line which my sense of justice dictates, and, therefore, I now enclose you two other lists of interrogatories for E. H. Harrison and James W. Bingham, with a respectful repetition of my request, "that each may be distinctly propounded, and the answer to each one written down in the precise language of the witness." When the absent witnesses arrive, I will notify you of the fact. Your clerk informs me that Mr. Harrison is sick, and I would therefore suggest that the interrogatories be forwarded to him with the permission that his answers may be made before any one authorized to administer an oath.

I am, respectfully, your obedient servant,

WASH'N A. BARTLETT.

Hon. S. R. MALLORY,
Chairman Naval Committee, United States Senate.

DEXTER'S HOTEL, *Washington, May* 20, *P. M.*

SIR: In compliance with my promise, to inform the Committee on Naval Affairs of the Senate of the arrival of any of the witnesses named in the list presented by me to the committee, I have to state that Mr. James W. Bingham has arrived this evening, and, as his engagements are pressing, to hope that the committee will give him an examination to-morrow. He will be at the committee room from 10 o'clock.

Very respectfully, sir, your obedient servant,

WASH'N A. BARTLETT.

Hon. S. R. MALLORY,
Chairman Naval Committee, Senate.

WASHINGTON, *May* 24, 1856.

SIR: It having been intimated to me that the Committee on Naval Affairs is inclined to the opinion, that I intended, by the statement in my printed letter, that on the arrival of the seamen's clothing at San Francisco "they were regularly passed through the custom-house," to convey the impression the duty had been paid, or if the

committee had not derived that impression from the said statement, that the collector had been induced to pass the clothing duty free, from my misrepresentation of the use and purpose for which it was intended. If such an impression exists, it is wholly erroneous, as will be seen by a particular reference to that letter.

The charge of Mr. Missroon was, "that it was known to one or more members of the Naval Board that his, Bartlett's, conduct on board the surveying schooner Ewing was discreditable to him, and believed to be dishonest."

This charge, as aided by the implication of the other testimony in the case, is composed of two elements:

1. That I had used the Ewing to convey the clothing.
2. That the clothing had been smuggled into the port.

The first charge is disproved by the receipt for the freight to the ship John G. Costar, and the testimony of Mr. Bingham. The second charge is disproved by the testimony of Bingham, and the statement of the collector, and the negative evidence of other witnesses.

While the charge of smuggling, which I understand to be a "secret" or "clandestine" introduction of goods into a country, has always been peremptorily denied, there has never been any denial that the duties were not paid. I knew just as well what Mr. Bingham, who was the head of the house at San Francisco in which I was interested, would state, at the time I requested you to examine him, as I know now. At page 23 I gave this history of the transaction:

"While at Valparaiso I purchased from the United States naval agency $728 25 worth of British sample clothing, (seamen's, and especially suited for surveying service,) equal to only one suit per man; my object in doing so was to have the means within my control of supplying the crew with clothing suitable to their work at a low price. We had learned that clothing had, with everything else, reached fabulous prices at San Francisco. The men's wages were but $12 to $18 per month, while the wages of the port were $250 to $300. These goods were shipped on board the John G. Costar and not on board the Ewing. The freight-bill and receipt are now in my possession, and a copy thereof will be found in the Appendix, IV. When they arrived at San Francisco, they were regularly passed through the custom-house, as will appear by the following affidavits."

I did not consider that I was answering to the question, whether the collector, under the circumstances, seeing that the clothing was purchased for the use and benefit of the crew of the Ewing, was wrong or right in passing the clothing without duty, but whether I had smuggled them. The statement of the collector is: "the undersigned does not see in this transaction alluded to anything to implicate Mr. Bartlett, or to attach to him a charge of smuggling. It is evident he applied to the proper authority to have the articles landed and placed under his control; and the question of duties or no duties was, under the circumstances of the customs in California, a question the undersigned could fully decide for himself and the *public service;* and that the undersigned did decide the matter in such manner as the circumstances called for there can be no doubt."

After the clothing thus passed through the custom-house and

landed, Lieutenant McArthur took as much of it for the crew as they wanted at that time, to wit: the amount of $239 50, as will be seen by reference to the disbursing office of the Coast Survey.

The balance was left on my hands very unexpectedly, and sold for a sum which did not reimburse me for my outlay. The clothing was sold by the firm of Bingham, Reynolds, Bartlett & Co., and the proceeds paid to me, after deducting commissions and other expenses. If this had been a trading transaction, the proceeds would have gone to the credit of the firm, and would not have appeared as a personal credit to me.—(See Bingham's affidavit, p. 23.)

It will thus be perceived that my purchase of the clothing was not made for the purpose of trade or gain, but for the accommodation of the crew; that upon this consideration they were regularly admitted and passed through the custom-house duty free. It may be said this was a violation of the law. It may be so, but custom of a very general character has permitted to collectors the exercise of a discretion in particular cases. Scarcely a vessel returns to our ports from a foreign cruise in which articles, often of considerable value, intended not for the purpose of trade, but for the use of the officers and as presents for friends, are not entered free of duty. There may be no law for this, but such is the practice, and though well known it has not been arrested by the government. I submit that the circumstances of this case might well justify the collector in not exacting the duty, and if there has not been a very exact discharge of his duties under the revenue law of the United States, it will be remembered that this transaction took place before California was admitted into the Union, and before our revenue laws had been formally put in operation in the country, and while the collector was discharging his functions under a mere military appointment. It will also be remembered that during this period, to wit, from the conquest of California to the 13th of November 1849, when James Collier, esq., the first collector appointed under constitutional provision, arrived at San Francisco, it was a matter of grave doubt whether, under the mere military authority of the officers of the army and navy, any duties were at all collectable. At the December term, 1853, the Supreme Court of the United States, after a very able discussion, decided this case in favor of the duties. In the introductory part of the decision the court say: "it seems, from the institution of the suit until now, to have been conducted with the wish on the part of the United States to give to the plaintiffs every opportunity to establish their claim judicially if that could be done, and with a desire on its part to obtain from this court a decision as to what are the rights of the United States in respect to tonnage and import duties in such a conjuncture as that was, when California was ceded by treaty to the United States, before Congress had authorized such duties to be collected there by a special act."

My object, however, is merely to affirm that *I have never intended to say*, and *have never said*, that duties were paid on this clothing; on the contrary, I always contended that the collector was justified in not collecting the duties, for the reasons assigned. Mr. Simms, one of the witnesses called against me, states: "*Bartlett said he had*

seen Harrison, amd had told him the goods were for the use of the vessel, and Harrison had charged nothing for them.''

This has been my statement from the beginning to the end.

I am, very respectfully, your obedient servant,

WASH'N A. BARTLETT.

Hon. S. R. MALLORY,
Chairman Committee Naval Affairs, United States Senate.

SENATE NAVAL COMMITTEE ROOM,
June 2, 1856.

SIR: I am instructed by the committee to inform you, that if you will make out your account as a witness to attend said committee, and give your evidence in the case of Mr. Washington A. Bartlett, (pending in said committee,) at two dollars per day from the time you attended, and ten cents per mile going and coming from the place of your residence at the time you were requested to attend, receipt the same and send it to me, it will be paid.

Respectfully, your obedient servant,

C. W. DOWNING,
Clerk Com. Naval Affairs of Senate U. S.

JAMES W. BINGHAM, Esq.,
88 *Wall street, New York.*

NOTE.—Similar letters addressed to A. C. Rhind, esq., and Lieutenant H. Davidson, who was summoned as a witness, but not examined.

A.

UNITED STATES SURVEYING SCHOONER EWING,
Off Benicia, California, March 12, 1850.

SIR: We desire respectfully to represent to you the following circumstances, and to appeal to the department on a point of duty:

There were ordered to this vessel when she was fitted out at New York, in December 1848, a commanding and one other lieutenant, officers of the grade of passed midshipmen, making up her complement. The Ewing was brought to San Francisco under the command of the lieutenant second in rank, the commanding officer to whom we reported joining her soon after her arrival, having come hither via Panama. Lieutenant Washington Allon Bartlett still remained attached to her when the command reverted to Lieutenant William P. McArthur, but was permitted to go on shore; and he took up his residence with a mercantile firm, as a partner, in which his name had appeared in the public prints of New York before our sailing from

that port. Since that permission to leave the vessel was granted to Lieutenant Bartlett he has performed no actual duty, though he has occasionally appeared on board, recognized as one of her officers. The watches have been kept by the passed midshipmen, the executive duties being attended to, in addition, by the senior passed midshipmen, acting master.

The duty, which the temptations of the country upon the fidelity of the crew oblige us to perform, has sometimes been arduous, always harassing. We cannot but think it partial and unjust that all the duty should be exacted from the junior officers, and none at all from an officer attached to the vessel by order of the honorable Secretary of the Navy, as we are, and whose rank in the service, superior to ours, is yet that of a watch officer. Recently, on our arrival at this port, we were informed by Lieutenant Commanding William P. McArthur that he would order Lieutenant Bartlett on board to keep a watch, the duty being, and having been for a time, somewhat severer than usual. Subsequently he refused to do so, saying that he had a delicacy about it, when spoken to by Passed Midshipman Gibson. Lieutenant Bartlett came on board, however, we believe, by order, and kept one or two watches. We are now given to understand that it was done *merely as an act of favor*, it being expressly denied that we had any right to expect it in point of duty. To you, sir, is the question respectfully submitted.

It seems to us strange that an officer can nominally belong to a particular vessel, yet, on board of that vessel, stand in no official position, and have no specific official functions. It seems to us strange and anomalous that an officer of the navy can receive credit for sea service and be living on shore, an avowed member of a business copartnership, at one and the same time. It seems to us stranger than all, that the enjoyment of the golden realities and speculations of California by our superiors, and the debarring of them from those whom we are placed over by law, making morbid undisciplined imaginations, should (two so very different things) operate jointly to make our service more arduous, that it would be an indelicacy to require those who enjoy all the privileges to share the duty.

We have the honor to be, sir, very respectfully, your obedient servants,

C. C. SIMMS,
WM. GIBSON.

Hon. Wm. B. Preston.

B.

United States Ship Portsmouth, *October* 8, 1846.

When you ceased to be caterer of this mess at Monterey, and rendered an account of your office, we became convinced that you had not only betrayed the trust reposed in you by your messmates by the most culpable negligence, but likewise in a manner far more serious, to

which we only now allude. For this, and for a number of other acts of yours while on board this ship, we have long ceased to feel for you the feelings of an equal, and have wished no longer to know you, and now that you have left the ship and ceased to be a member of our mess, we take this manner of intimating to you that we wish hereafter to meet you as a stranger.

J. S. MISSROON,
JAS. H. WATMOUGH,
BEN. F. B. HUNTER,
A. A. HENDERSON, *Assistant Surgeon*,
M. DUVALL,
N. B. HARRISON, *Acting Master*.

W. A. BARTLETT, *Lieutenant*.

OFFICE IN YERBA BUENA, *October* 15, 1846.

SIR: I am under the necessity of addressing you concerning a note which I have received, signed by Lieutenant Missroon and five other officers of the ward-room mess of the ship, charging me with "culpable negligence in managing the affairs of the mess, and also of betraying the trust reposed in me in a far more serious manner," "and that for this and a number of other acts while on board the ship they desire hereafter to consider me a stranger."

Charges like the above, sir, cannot be by me received without meeting them, let the consequence be what it may. I meet them with the most positive denial of any foundation in fact, and demand that they be proved or withdrawn.

I place myself on the ground of my entire innocence of any such intent or act, as implied in the charge, and upon that ground I will stand or fall. What the "other acts" referred to are, I know not; but I feel confident in asserting that any "act" of mine, either public or private, can be explained to any unprejudiced mind in such a manner as to acquit me from any serious offence against the laws of the navy, or propriety of conduct required of me as an officer and gentleman.

I submit to you, sir, the case, and desire that you call upon them to show why they have taken this course, when there are methods of proceeding so different, and which would give me a fair chance of confronting them, which cannot be expected without others to decide between us.

I shall await patiently the time when I can meet these charges on fair terms, either before yourself, or any court of inquiry or court martial, which may be required to bring out the truth and this matter to a final issue; that issue I have no desire to avoid, and the only reason that I did not lay it before you the moment I received the note was because the exigencies of the service, as you are well aware, required that there should be no interruption to the preparations for the hurried departure of the forces. Relying on the ground of my entire innocence and the power of truth, I await the result with all

possible calmness, and the continued desire to merit your approbation in the discharge of all my duties.

Very respectfully, sir, I have the honor to be your obedient servant,

WASH'N A. BARTLETT,
Lieutenant United States navy.

Commander JOHN B. MONTGOMERY, *U. S. N.*,
Commanding northern district of California.

UNITED STATES SHIP PORTSMOUTH,
Yerba Buena, October 16, 1846.

SIR: Mr. Bartlett, in his letter to you of yesterday, apprising you of the determination which the ward-room mess has arrived at in his case, has been pleased to place me in a conspicuous position, by the sole mention of my name; this, and his tone of defiance, make me feel myself called upon to meet a certain part of that letter in a manner more direct than otherwise I should have been disposed to do.

Mr. Bartlett says, "I feel confident in asserting that any 'act' of mine, either public or private, can be explained to any unprejudiced mind in such a manner as to acquit me from any serious offence against the laws of the navy, or propriety of conduct required of me as an officer and gentleman," and "I shall await patiently the time when I can meet these charges on fair terms, either before yourself or any court of inquiry or court martial, which may be required to bring out the truth," &c.

In the first place, sir, I desire it to be understood, that as the executive officer of this ship, I have, more than once, seriously thought of preferring charges against Lieutenant Bartlett; but have, in each instance, been deterred, *solely* by the entire prostration of the man, when spoken to by me officially of his acts, which were at variance with the usages of the service, and with the deportment of an officer and gentleman. This feeling of compassion is now, however, removed, by the assurances which he gives you of the uniform propriety of his conduct, challenging investigation.

I beg leave, therefore, to inform you, sir, of my immediate readiness to submit charges against Lieutenant Bartlett, for unofficer-like conduct, in bringing to sea a stock of clothing, cloths, cigars, &c., which were vended to his brother officers and others, making his state room a kind of huckster's shop, and degrading thereby the respectability of the ward-room; in speculating upon a private library, and meanly soliciting subscriptions of money from individuals, some of whom, it was well known, would not continue in the ship longer than her outward passage, and among whom was a public functionary; in disposing of, at *private and secret* sale to a lady at Monterey, an article of dress, at an exorbitant advance upon its cost, and when detected and exposed in it withdrawing the article—thus showing his consciousness of the impropriety—all of which, whenever required, shall *appear* in specific form. My information on the foregoing points was

mainly derived from the ward-room officers, enough of whom are now in the squadron to substantiate the charges.

If it be deemed proper to go further back than this cruise, or should Mr. Bartlett desire to do so, in order to establish the point of "that propriety of conduct required of me as an officer and gentleman," there will be no difficulty in adducing instances upon the testimony of respectable officers, (I name Passed Midshipmen Morris and Duer,) which occurred in the surveying service, and which places Mr. Bartlett in a worse light than anything charged against him in this letter; a statement of which you are at liberty to call on me for.

Lieut. W. Schenck, who is expected here in February, is an important witness, now that Lieutenant Forrest has returned to the United States. With a desire to act openly in the matter, I would respectfully request that Mr. Bartlett may be made aware of all I communicate to you on this subject; and I beg leave to suggest, that if you determine to recommend a court, or if Mr. Bartlett still desires to have one, it be assembled before the witnesses now in the squadron return to the United States, among whom are Dr. Chase. Mr. Carter, and W. Schenck.

Very respectfully, your obedient servant,

J. S. MISSROON,

First Lieutenant United States Ship Portsmouth.

To Commander J. B. MONTGOMERY,

United States Ship Portsmouth.

UNITED STATES SHIP PORTSMOUTH,

Yerba Buena, October 16, 1846.

SIR: We have perused the letter of Lieutenant Bartlett handed by you to the executive officer last evening, which complains of the grounds upon which we have thought it necessary and proper to desire him to discontinue his acquaintance with us in future.

In addressing you this letter we beg leave to assure you, sir, that we do not feel ourselves bound to answer any demand coming from Lieutenant Bartlett; we write only for your information.

The palpable mal-administration of our mess affairs induced the mess to deprive him of the office of caterer. Suspicions of his dishonesty in the disposal of funds entrusted to him were strengthened by his delay and evident reluctance in yielding up the mess accounts to his successors; but these mere suspicions became confirmed when, in course of examination, it appeared that he had charged more than was proved to have been the actual daily expenses in several instances, and which, when so proved, he in subsequent accounts altered the items to suit the evidence adduced against his previous statement. The balancing of his accounts was made by a convenient and repeated insertion of "sundries," of which he could give no satisfactory information.

At this period it was contemplated to signify to Mr. Bartlett that he could no longer be associated with as a messmate, but his pitiably

depressed deportment, and meek submission to the cool reserve with which he was generally treated, moved our compassion, while it convinced us of his conscious guilt. When, however, he considered himself as withdrawn from the mess by his engagements on shore, we were unwilling to be longer recognized by him as acquaintances, and therefore it was that we addressed him our note.

"Other acts" to which we had reference, and of which Mr. Bartlett most strangely professes himself to be ignorant, scarcely require recapitulation here; those committed previous to, as well as during, the present cruise, have certainly given him a most unenviable reputation and notoriety in the navy; so much so, indeed, that no less than two officers of standing, now in this squadron, have objected to orders to this ship, because they would necessarily by them be associated with Mr. Bartlett, alleging his character as the ground of objection. But, sir, in order to avoid a charge of vague generalities in a matter so serious, we will cite an instance of disreputable conduct of comparatively recent occurrence, which has had great weight with us in the course we have taken. At Monterey, in May last, he disgraced himself as an officer, and reflected discredit upon his ship, by smuggling and disposing of an article of dress to a lady, at an exorbitant advance upon its cost, evincing at the same time his own sense of the impropriety of the transaction, by asking a promise of secresy, and by subsequent shameful equivocation when questioned on the subject.

We are surprised at his assumed defiance and reckless denial of facts which are so susceptible of the fullest proof, and in order that Mr. Bartlett may comprehend his position, we respectfully request that he may see this letter.

We have the honor to be your obedient servants,

J. S. MISSROON, *Lieutenant;*
BEN. T. B. HUNTER, *Acting Lieutenant;*
JAS. H. WATMOUGH,
A. A. HENDERSON, *Assistant Surgeon;*
N. B. HARRISON, *Acting Master.*

ALCALDE'S OFFICE, YERBA BUENA, *November* 14, 1846.

SIR: Enclosed you will receive the letters to which you referred in your letter to me of this date. I trust that through a kind Providence the time will come when the poison shall be extricated from them, and my mind relieved from the load with which they have oppressed me. As, sir, you did not ask me to make any explanations upon them, I shall not offer any, except to say, that my anxious efforts to serve my messmates faithfully, and in all things to the best of my ability, have been most sorely requited; while acts of kindness and repeated solicitation to part with some articles I could spare (although always unwilling) have been represented in a light far different from that in which they were received when it was considered that a favor had been conferred; and others are stated or rumored that have no foundation in fact. Upon such charges it seems useless to attempt by ex-

planation to disabuse the minds of those who state that they have so deliberately concluded; therefore I cannot hope that aught I could say would make any favorable impression upon them; hence I only say or write thus much, and to you, sir, only.

Trusting that to my esteemed commander, who has so long known me, I shall be yet able to make good my defence and prove ever worthy of his confidence,

I have the honor to be, sir, with high respect, your obedient humble servant,

WASH. A. BARTLETT.

Commander JOHN B. MONTGOMERY,
Com'g northern district of California, and U. S. S. Portsmouth.

C.

Received from the Purser:

Dr. Wood	$20 00
Purser	200 00
Dr. Duval	43 00
Purser	20 00
Purser	100 00
Purser	53 00
Purser	22 00
	458 00
Stopp	90 50
Poultry	40 00
Sirius	18 25
Green	50 00
Green	44 62
Flour	10 00
Chickens	2 50
Corned beef and oysters	4 50
Thirteen days' marketing and sundries	80 06
Vegetables	10 00
Lard	6 50
Vermicelli	6 75
Sundries	7 75
Marketing	8 00
Butter	6 50
Missroon	5 12
Marketing	7 25
Marketing	1 50
Rice and bread	9 75
Marketing	5 25
	421 60
	420 80

Fifteen days' marketing	$64 06
Poultry and sugar, (Stopp's bill)	90 50
Squashes and vegetables, (Stopp)	10 00
Bill of brig Sirius	18 25
Lard, 26 lbs., at 25 cents	6 50
Vermicelli, 25 lbs., at 25 cents	6 25
Tin box	50
Porterage	1 00
Mustard, oranges	3 25
Tomatoes, onions	3 50
Baking-dishes, plates	2 00
Sugar	3 75
Chickens	2 50
Flour	10 00
Corned beef	3 25
	226 29
Oysters	1 25
Black pepper	75
Washing	2 00
Twelve turkeys	20 00
Twenty-four ducks, at $10	20 00
Chinese screens	4 00
	274 29
Received	2 50
	276 79
Marketing	8 75
Sundries	8 00
Flour	14 00
Pitcher	4 00
	34 75
	421 60
	456 35

D.

MESSMATES: Learning from Messrs. Missroon and Watson that there is dissatisfaction expressed with my late catership, and especially with regard to the amount of money charged by me as expended for marketing at Mazatlan, I desire your calm consideration of the following explanations, in order that I may be able to satisfy *all*, since the present state of my mind under the implied errors in my accounts is too painful to be borne. I cannot but believe that every one of my messmates is entirely unwilling to do me the least injustice; therefore I hold myself ready to make all the explanation my accounts or *memory can give; but* I wish the case fairly stated.

My accounts show as follows for marketing at Mazatlan:

March 18th, $4; 19th, $6 - - - -	$10 00
March 20th, $4; 21st, $4; 22d, $5 - - -	13 00
March 23d, $5; 24th, $4; 25th, $4 - - -	13 00
March 26th, $3; 27th, $3; 28th, $4; 29th. $4 -	14 00
March 30th, $4: 31st, $4; April 1st, $5 - -	13 00
	63 00
Add for purchased at the grocery: pepper, 25: vermicelli, 25; sage, 6¼; vegetables, 50 - -	1 06
March 18th to April 1st, both included, is 15 days -	64 06
	$4 27 daily.

With regard to the above, most of it was spent by Neal, who was market boy, and who Dr. Wood said knew all the prices and best places; besides, I frequently called him to my room, and took a note of every item, to see that he accounted for all the money given him. Neal will also recollect that we bought all the *tongues* that could be had, at 25 cents each, and put them in pickle—some days two, some three, some *four*. In consequence of the steward getting in the brig, we lost nearly all of them, as they spoiled. In consequence of having more company than usual, we some days sent twice to market; Neal will recollect it, I am certain. Again, I some days got fruit, oil, &c., which is included in the marketing, (being taken from my daily notes.) When I took money out of the mess-bag, it was charged as expended; if any was returned, it went the next day, or was spent during the day for some necessary article.

NOTE.—Mr. Watson obtained the idea that there had been $80 and over expended at market in 13 days; *it is not so charged in my book.* That amount would include—

Sundries - - - - - - -	$17 06
Marketing - - - - - - -	63 00
Equal to - - - - - -	$80 06

But this was made up in amount as above; the real *marketing* is as stated on first page. W. A. BARTLETT.

There being several ships in the harbor, the mess had more or less company at dinner every day, and provision was made accordingly.
W. A. B.

I purchased stores as fast as possible; indeed, I seemed to have no time, for when I took the catership, the succeeding Wednesday was fixed upon as our day of sailing, as supposed for the Columbia river. Of salt provisions we had but a small quantity, and it was absolutely necessary they should be supplied with such articles as could be had, to supply the table on the passage.

I therefore ordered the poultry found charged in Stopp's bill, and he furnished the sugar at 50 cents the arroba less than any one else would sell it for, while he asked no more for his poultry, as I found by walking over the whole town.

His bill of poultry, sugar, and corn is - - -	$90 50
(having deducted the sack of sugar which I let the captain have.)	
I afterwards purchased of him—	
Squashes and vegetables - - - - -	10 00
Bill of brig Sirius - - - - - -	18 25
26 lbs. of lard, (25 cents per lb.) - - - -	6 50
25 lbs. of vermicelli, (25 cents per lb.) - - -	6 25
Tin box for same - - - - - -	50
Porterage, (having two men going with me for three hours)	1 00
Mustard, 75 cents; oranges, $2 50 - - -	3 25
Tomatos, $2 00; onions, $1 50 - - - -	3 50
Baking dishes, $1 75; plates, $1 25 - - -	3 00
25 lbs. of sugar, (purchased on the second day of my catership, to save the white box then on hand) - -	3 75
Four chickens, (62½ cents each) - - - -	2 50
Flour, (one sack) - - - - - -	10 00
Paid a bill for corned beef, forgotten by N. Wood -	3 25
Of Williams, fresh oysters - - - -	1 25
1 lb. black pepper - - - - -	75
Washing table cloths, (eight) - - -	2 00
12 turkeys - - - - - -	20 00
24 ducks, ($10 per dozen) - - - -	20 00
Rice of Hanson, supplied by purser's steward - -	2 50
Paid for Chinese screens - - - - -	4 00
(I did not intend to buy but one, but the second being sent to exchange, it became injured, and I then paid for it.)	
	212 75
Add marketing, (sheet 1) - - - -	64 06
Total amount expended at Mazatlan - - -	276 81

W. A. BARTLETT.

Received of purser - - - - -	$200 00
Dr. Duvall - - - - - -	43 00
Purser - - - - - - -	20 00
	263 00
Dr. Wood - - - - - -	20 00
	283 00
	276 81
	6 19

on hand when I left Mazatlan; beside the $2 25 paid in by the old *members to settle* the cook's balance.

Mess expenses at Monterey.

22d to 28th, both included, I expended, in cash, for eggs, milk, vegetables, and butter	$8 00
Thirteen lbs. of butter, of Mr. Little	6 50
Cash sent on shore, by Mr. Misroon, 5 days	5 12½
The 4th, 5th, and 6th	3 75
The 7th, 8th, 9th, and 10th	3 50
The 11th and 12th	1 50
The 13th, 14th, and 15th	2 25
The 16th, 17th, and 18th	3 00
The 19th, 20th, 21st, and 22d	4 25
The 23d, 24th, 25th, and 26th	4 50
The 27th, 28th, and 29th	3 25
Four lbs. butter, of Mr. Little	2 00
Fish of the Kanakas	1 00
One barrel of flour, (Barnstable)	14 00
Two pitchers, (Barnstable)	4 00
Mr. Green's bill	56 00
Mr. Green's bill, (sea stores)	44 62
	167 24½
Add cash paid purser's steward for rice	4 75
Bread and rice, paid for by steward	5 00
	176 99
Washing table cloths	1 75
	178 74
	276 81
	455 55
Receipts at Mazatlan	283 00
At Monterey	175 00
	458 00
	455 55
	2 45
Paid Mr. Watson	2 50

W. A. BARTLETT.

E.

NEW YORK, *November* 7, 1844.

Lieut. WASHINGTON A. BARTLETT.

Bought of Harper and Brothers:

W. A. B.—*Catalogue of the Irving Library:*

1	Prescott's Conquest of Mexico, 3 vols	$6 00
1	Grattan's Netherlands	60
1	Rollin's Ancient History, 2 vols	3 75
1	Hallam's Middle Ages	2 00
1	Milman's History of Christianity, (Captain)	1 90
1	Scott's Scotland, 2 vols	1 20
1	Robertson's Charles V	1 75
1	Days of Queen Mary	20
1	Lady Sale's Journal	10
1	Goldsmith's Greece	38

1	Moors of Spain	$0 38	
1	Xenophon, 2 vols	85	
1	Lucien Bonaparte	30	
1	Memoirs of H. More, 2 vols	1 50	
1	Duchess d'Abrantès	1 37	
1	Lives of the Signers of the Declaration of Independence	90	
1	McGuire's Washington	1 13	
1	Edmund Kean	65	
1	Life of Haynes	90	
1	Memoir of Hewes	62	
1	Colonel Crockett	50	
1	Necromancers	65	
1	Anecdotes of Scott, (Sir Walter)	60	
1	Apostles	25	
1	Durbin's Travels	2 00	
1	Santa Fé Expedition, (Mr. Smith)	2 50	
1	Olin's Travels	2 50	
1	Yucatan	5 00	
1	Central America, (Mr. Smith)	5 00	
1	Travels in Egypt	1 75	
1	Glory and Shame	1 50	
1	The Far West	1 50	
1	Nestorians	1 00	
1	A Year in Spain	2 25	
1	Spain Revisited	1 75	
1	American in England	1 50	
1	Morrell's Voyages	1 50	
1	Polynesian Researches	2 50	
12	Before the Mast, at 45 cents	5 40	
1	Owen's Voyages	1 13	
1	Malan's Inquiry	20	
1	Summerfield's Sermons, (Captain)	1 75	
1	Renwick's Chemistry	75	
1	Pleasures of Science	38	
1	Young Sailor	37	
1	Mayflower	45	
1	Jacob's Narrative	1 25	
1	McCulloch, mus	6 00	
1	Neal's Puritans, mus., (Captain)	3 50	
1	Mysteries of Paris	75	
1	Chuzzlewit	75	
1	Hoboken	45	
1	Priedeaux's Connexion, (Captain)	3 75	
1	set Family Library, (except 14 vols.,) 157 vols	69 95	
4	vols. Boys' and Girls' Library, at 35 cents	1 40	
1	vol. 10 Sparks' Biography	75	
1	Joe Cowell	20	
1	Plutarch's Lives	2 00	
1	Seaward's Narrative	38	
1	Robinson Crusoe	1 25	
1	Shakspeare, 2 vols., sp.	2 75	
1	England and the English	85	
1	Percy Anecdotes	2 00	
1	Downing's Letters	62	
16	Nos. Select Novels, at 20 cents	3 20	
21	Nos. Select Novels, at 10 cents	2 10	
1	Webster's Dictionary	3 50	
	Box	80	
	278 volumes		$179 36
	2 Nos. of Illustrated London News		2 00
	Transportation from New York		3 50
			184 86

All the above books, 278 volumes, were placed in the library for general use.

W. A. BARTLETT.

Received, New York, July 8, 1852, from Lieutenant Washington A. Bartlett his draft on Mr. George Daniels, at ninety days, for one hundred and eighty dollars, which, when paid, will be in full for bill of November 7, 1844.

$180 HARPER & BROTHERS,
per WM. H. DEMAREST.

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All these books received and placed on the shelves of the Irving library, with the full and free consent of Captain Montgomery.

WASH'N A. BARTLETT.

F.

CAPITOL, WASHINGTON, *March* 11, 1856.

SIR: In the hurry of copying the draft of my communication to the committee this morning, the *enclosed leaf* appears to have been omitted, or to have dropped out of the copy I read and placed on file.

Do me the favor to put it in, if on examination it should be found in fact to have been omitted, as I think it was.

It comes in between the words "carried me," and "officers are now found."

Please permit your clerk to show me the original that I may see that it is corrected.

Very truly, yours,

WASH. A. BARTLETT.

Hon. S. R. MALLORY,
Chairman Naval Committee, Senate.

SIR: On Thursday last I was informed through a verbal message from the clerk of your committee, that my memorial to the Senate complaining of the action of the late Naval Board would be taken up for consideration at the meeting of the committee on the Saturday following.

That memorial not only denied the justice of the *conclusion* to which the Board had arrived, but also the propriety and *legality* of the *means* which produced it. These proceedings were contested upon the ground that they had exercised the high functions of power without any of those safeguards by which the Constitution and laws seek to protect and preserve the rights of the citizen. In other words, that individuals had been tried, found guilty, and punished, who have had no opportunity of knowing the grounds of the accusation, to confront their accusers, to cross-interrogate the witnesses for the prosecution, and to have compulsory process for their own witnesses, and such aid from counsel as might be desired.

As for myself, I was on service on the coast of Africa, when I received intelligence of the striking of my name from the rolls of the navy, and I understand, from an inspection of the law under which it was accomplished, that the only legitimate question to have been entertained was as to my efficiency to perform promptly all my duties ashore and afloat, or in the exact terms of the law of the 28th February, 1855, "of performing promptly and efficiently all their (my) duties both ashore and afloat."

And feeling that injustice had been done me by the decision in my case under the law, I had, by memorial, appealed to the Senate for redress, and that memorial being referred to your committee I had supposed that your investigation would be limited to the *same legal issue* as was by the law submitted to the Board; and on that issue I am prepared to exhibit the most satisfactory evidence.

But in my attendance on the committee on Saturday, the evidence permitted seemed to take a far wider range, and which, in my imperfect judgment, was altogether irrelevant and illegal in this issue; and it still promises to take a range over the most of the globe, over all sorts of subjects, and to be confined to no limit.

What its future course may be, or the extent to which it may be permitted by your committee, it is impossible for me to foresee; and in this state of ignorance as to the allegations intended to be sustained against me here, I feel that any further personal attendance before your committee would be useless to me. I should not know how to defend myself, unskilled as I am in such proceedings, against imputations and evidences against which, from ignorance of what is to be attempted, I am entirely unprepared; besides, the committee have not thought it advisable to permit me to have the benefit of counsel, and therefore my presence even might be *injurious* to me, by my giving a seeming sanction to at least some testimony already presented entirely unworthy of your consideration.

I beg leave therefore respectfully to say, that I shall not give any further personal attendance on the investigations you may please to make, prefering to leave it to the justice of the committee to conduct the investigation according to their high sense of justice and the legal bearing of the act under which all these proceedings have arisen.

I have to request, however, that when your examinations or investigations are concluded, that I may be notified of the fact, and have authority, by the aid of such process as the laws can afford me, to bring before you witnesses, who, as I believe, will accord the fullest evidence of my efficiency as an officer, and my claims to character as a gentleman.

Upon my arrival at the committee room on Saturday last, I found several witnesses (some of whom had been brought from a distance) for the apparent purpose of testifying *against* me; and that my conduct and standing as an officer and man, as well subsequent to as prior to the action of the Naval Board, were to be subjected to investigation, without any specifications of time, place, or circumstance.

It was in this unexpected position, without distinctly knowing what were my rights or duties, I asked for permission to have the aid of counsel. This was denied me, on the ground that I was not upon trial, that the committee had *no authority* to summon witnesses on my

behalf, and that I had only been invited as it were through courtesy. Subsequent developments showed that my desire to have the aid of counsel was well founded.

It is proper to add that the committee proffered to *invite* such witnesses as I should desire to have examined.

The examination of the witnesses present was then entered into, and their object seemed to be to discredit me as a man and as an officer. My object is not now to enter upon a refutation of the allegations made. Much that was emphasized can be explained by a few words; and I have only now to say, that having made complaint of the Naval Board for their mode of proceeding, I cannot be expected to approbate or acquiesce in any proceedings in which my legal rights are not duly guarded.

It was not the *tribunal*, but its mode of proceeding, that I have objected to, in my complaint of the action of the Naval Board. I am informed now that I am not to be "*tried;*" and the committee, I presume, are investigating the propriety of the finding of the Naval Board, as to my efficiency to perform, promptly and efficiently, all my duties, ashore and afloat.

I appreciate the offer of the committee to *invite* any witnesses I might name; but it must be evident that this is not sufficient, in view of the range to which this investigation is proceeding—over different sections of the globe, wherever the fortunes of the service have carried me—and that before I can know even what documents to bring in, I should first be furnished with the charges to be sustained or answered to, and armed with *compulsory process to compel the attendance of witnesses.*

I do not presume even to desire to indicate to the committee what course it should pursue in the investigation now begun; all that I desire to say is, that if your committee think proper to examine witnesses, (and I perceive the chairman administers an oath to them,) I cannot, with any justice to myself, by my presence lend a seeming acquiescence to it.

If, however, when the committee shall have concluded the examination, it will furnish me with any statements that affect me as an officer, which in their judgment tend to sustain in any degree the propriety of the action of the Naval Board, I pledge myself to make a full, frank, and satisfactory explanation of it—and that the truth of that explanation, if it does not by its own nature carry conviction to every reasonable mind, shall be made good by those evidences which the law has heretofore recognized as full legal proof.

I have been in the service of the country for twenty-three years, during all which time I have never been the subject of court martial or reprimand. I may be pardoned the remark that "I have done the state some service," while in the discharge of duty legally and properly assigned me by competent authority, and to which I have ever responded with the most ardent zeal—as all my chiefs and the department can testify. But those who have been instrumental in producing the result, and placing me in the position I now occupy, are very naturally solicitous in bringing up witnesses to sustain the judgment made on their allegations; and the facilities afforded by official position are

confessedly great—especially where the citizen is not armed with process of law to bring in his witnesses.

Officers are now found to speak to matters which are to be used (if used at all) to justify my exclusion from that service to which I have devoted all the best years of my life; yet these matters have no reference whatever to the question of "efficiency." But what sense of duty has heretofore prevented these officers from putting their charges or allegations in such specific form as to have enabled the government to discharge its obligations to the service (if the service demanded it) and to myself? Let this *trial* come when and where it may, I am not only strong in the consciousness of my innocence, but in the ability to prove it.

In all that I have now presented, I beg leave to say that while I desire to preserve to myself all my legal rights, I have the most profound respect for your honorable committee, individually and collectively. They have a difficult and arduous task to perform, and will doubtless proceed in it according to the dictates of justice and a sound and enlightened judgment.

With high respect, I have the honor to be your obedient servant,

WASHINGTON ALLON BARTLETT.

Hon. S. R. MALLORY,
Chairman of the Naval Committee, Senate.

G.

TREASURY DEPARTMENT, *June* 16, 1852.

SIR: Congress having authorized the construction of light-houses at different points on the Pacific, the department contemplates furnishing them with the improved French lenses, provided the needful appropriation can be obtained to cover the increased expense. But, previous to giving any positive orders for the purchase of them, it wishes to obtain particular and detailed information upon all points connected with the subject, and for that purpose has appointed you to proceed to Paris.

You will, on your arrival, make yourself acquainted with the different manufacturers of these lenses, and ascertain whether there is any choice between them as to the quality and excellence of their work, and their respective prices. The department wishes you to procure the latter in detail, not only as regards the different sizes or orders, but also for the separate portions of each, so far as they can be furnished by the manufacturers.

In the detailed statement of items and prices already in the possession of the department, it is presumed that there are many items enumerated that are either extra or unnecessary, and it is the wish of the department that, after a full consultation with the proper parties, you will determine upon all the accessories that will be necessary to make the entire lighting apparatus, including the lantern, complete and suitable for the intended purpose, without including anything

which, in your opinion, is not necessary. The information thus obtained distinct and separate for each size or order of lenses down to the 6th order, or lower, if any smaller order exists; you will please forward as promptly as possible to the department, exhibiting the full and entire cost of each, on *ship-board at Havre*, with full remarks and explanations on your part, so that the department may be enabled to act advisedly in its further proceedings in the matter.

You will particularly ascertain and report on the subject of any recent improvements in the manufacture of these lenses by which their power has been increased, and obtain the best information as to the distance at which the different orders can be distinguished under ordinary circumstances when properly located, and at suitable elevations.

You will receive herewith the plans and specifications of the lighthouses, as they have been contracted for, on the Pacific; and you are probably aware, from actual observation, of most of the locations, their elevation, and the nature of the neighboring coast. I will only add on this point, that the contract stipulates that in no case is the lighting apparatus to be less than one hundred feet above the water, and if any of the proposed sites are low ground the tower must be elevated accordingly.

In making your selection of the needful items for proposed construction of the lantern and lighting apparatus, &c., you will, of course, be governed by the nature, size, &c., of the towers on which they are to be placed, agreeably to the contract, and it will probably be most advisable to make these calculations on the basis that the towers may be finished before the lighting apparatus reaches the respective points.

If, however, there is a material difference with any portion of the apparatus, fixtures, &c., when they are to be placed on a tower already finished as the present ones are to be, or when furnished, to be put in their proper places during the construction of the tower, you will please note the same in detail in your report.

The department would also wish to have the statement of cost for any different kinds of materials which are, or can be, used in the construction of these apparatus, such as bronze, copper, iron, &c., which might be indiscriminately used, with your views as to which would be most advisable under all the circumstances.

Your report will also include the kind and cost of all the needful items necessary for the use of the light keeper as connected with the due care and operation of the light after it has been completed and put into use, including not only such items as will be permanently required for the above purpose, but likewise those which are in regular consumption, estimating the supply of the latter for a period of one year.

It has been suggested that the 6th order lenses will be advantageously employed in various small lights on the coasts and harbors of the United States, without making any other change, except substituting them for the present reflectors. You will please ascertain on what terms this order of lenses can be procured, with a suitable mechanical or other lamp, and without other fixtures or accessories of any kind; or if you find on inquiry if the latter would be absolutely necessary in order to make the suggested change, then to include the

cost of them also, but to have nothing of the kind that is not *absolutely* necessary.

The department, after hearing from you as regards the smaller sized lens, and obtaining further information in connexion with the subject of *this size*, may probably try the experiment with six or eight of the smaller light-houses; and if it succeeds, extend to a much larger number.

With this you will receive a copy of a communication from the Light-house Board on the subject of the French lens. The department has not yet approved of this report, and it is not therefore furnished to you as a guide, but merely in case it may contain some details or information which might be useful to you.

The department will make no determination as to the kind or orders of the lighting apparatus and fixtures, as recommended in this report, until after it hears from you, and the needful appropriation shall have been made by Congress.

As an officer of the government, you, of course, are aware that the department is prohibited by law from making you any compensation for the service you may render in this business, and can only pay for your passage to and from Europe, and the customary travelling expenses to Paris, and your personal expenses while there, with the understanding, as agreed with you, that they are not to exceed three per cent. on the expenditures that you may make for the purchase of the different lighting apparatus.

You will please execute the customary bond required from all disbursing officers in the department of the sum of $———, with surety to the satisfaction of the department, and forward the same previous to your departure.

The department will hope to hear from you fully and promptly after you reach Paris.

Very respectfully, your obedient servant,

WM. L. HODGE,
Acting Secretary of the Treasury.

W. A. BARTLETT, Esq., *U. S. N.*

H.

TREASURY DEPARTMENT,
Office Light-house Board, October 26, 1854.

SIR: Your accounts for disbursements and expenses, under your appointment of the honorable Secretary of the Treasury, of November 16, 1852, for superintending, at Paris, the construction of light-house apparatus, having been referred to this office for a preliminary examination, and such a detailed report thereon as will enable the honorable Secretary of the Treasury and the accounting officers to decide understandingly on the various charges contained therein, I have to request that you will furnish, at your earliest convenience, the original, or a copy, of your appointment and instructions of November 16, 1852,

and such sub-vouchers, or other explanations of your expenses, as you may be able to furnish, to accompany the report from this office.

It is desirable that all the papers which you may wish to accompany your account from this office to the honorable Secretary of the Treasury be transmitted at the earliest practicable day, so that the subject may be taken up and reported upon.

I am, very respectfully, your obedient servant,

THORNTON A. JENKINS, *Secretary.*

Lieutenant W. A. BARTLETT,
United States navy, New York, N. Y.

I.

TREASURY DEPARTMENT,
Office Light-house Board, November 7, 1854.

SIR: A letter was addressed to you at New York on the 26th ultimo, requesting that you would furnish, at your earliest convenience, certain papers, sub-vouchers, &c., to enable this board to report understandingly upon your accounts of disbursements, as required by the department.

No answer having been received, it is considered proper to inform you that this board will be ready, in a day or two, to take up your accounts, and that if you think proper to be in Washington to give any explanations that you may deem necessary to a proper understanding of them, you will please notify this office, that they may be retained.

Very respectfully,

THORNTON A. JENKINS, *Secretary.*

Lieutenant W. A. BARTLETT, *U. S. N.*,
No. 176 *Second avenue, New York.*

K.

TREASURY DEPARTMENT,
Office Light-house Board, November 15, 1854.

SIR: I have the honor to return herewith, in obedience to your instructions of the 30th of September last, the accounts and vouchers of W. A. Bartlett, esq., for expenditures made by him for illuminating apparatus and lanterns for light-houses on the coasts of California and Oregon, under his instructions of June 16, 1852, and January 31, 1853, from the Treasury Department, arranged under the proper heads of appropriation; also, the vouchers presented by Mr. Bartlett for his passage from Washington city to Paris and back, and his claim of commissions upon his actual disbursements at the rate of 3 per cent., (the maximum rate agreed upon by the department, as will

appear from the following paragraph contained in the letter of appointment, dated June 16, 1852:)

* * * "As an officer of the government, you, of course, are aware that the department is prohibited from making you any compensation for the service you may render in this business, and can only pay for your passage to and from Europe, and the customary travelling expenses to Paris, and your personal expenses while there, with the understanding as agreed with you, that they are not to exceed three per cent. on the expenditures that you may make for the purchase of the different lighting apparatus."

* * * * * * * *

The two vouchers embraced in abstract No. 1, for the purchase of lanterns and illuminating apparatus for the light-houses at Fort Point and Alcatraz island, amounting to 47,998.33 francs, and the 13 vouchers embraced in abstract No. 2, for the purchase of illuminating apparatus and lanterns for Point Loma, Point Pinos, Cape Hancock, Cape Conception, Humboldt, and the Farrallones light-houses, and for stationery, drawing materials, and postages, amounting to 411,526.20, making a total of 459,524.53 francs, appear to be correct, and in conformity to the terms of the contracts entered into with the manufacturers of light-house apparatus in Paris, in obedience to the instructions of the department.

The vouchers Nos. 10, 11, 12, and 13, embraced in the last abstract and account are

For stationery - - - - -	243.25 francs.
For drawing materials - - - -	17.65
For postage - - - - -	122.85
	383.75

Equivalent to about $76 75.

The aggregate of disbursements made by Mr. Bartlett, including the four vouchers last named, amount to 459,524.53 francs, the commissions upon which, at the rate of three per cent., will be 13,785.73 francs; which latter sum Mr. Bartlett claims as a partial reimbursement of his actual personal expenses, in addition to the sum of $380 10 paid for his passage to and from Paris, and for which vouchers are furnished.

Should the maximum rate of commissions be allowed Mr. Bartlett upon the settlement of his accounts as an equivalent for his actual expenses, the whole amount of his expenses will be as follows:

For passage from Washington city to Paris, France, and back again - - - - - -	$380 10
For stationery, postage, &c. - - - -	76 75
For personal expenses, 13,785.73 francs, equivalent, at five francs per dollar, to - - - - -	2,757 14
Aggregate of expenses claimed - - -	3,213 99

The questions to be decided by the department under the instructions to Mr. Bartlett of June 16, 1852, are, it is respectfully submitted, the *following, viz:*

1st. Whether or not the allowance of three per cent: upon the amount of disbursements will be granted, amounting to about $2,757 14.

2d. In the event of the maximum rate of commissions (three per cent.) being allowed as above, whether or not the expenses of passage to and from Paris will be allowed as an additional charge, or will be considered as a part of the expenses embraced in the maximum rate, amounting to $380 10.

3d. As to the allowance or disallowance of the four vouchers for stationery, drawing materials, and postage, $76 75.

As none of the funds furnished by the department to Mr. Bartlett are upon requisitions from this office, the correctness of the credits as exhibited in the accounts current can only be ascertained by reference to the books of the register and accounting officers of the Treasury.

All of which is very respectfully submitted, by order of the Light-house Board.

THORNTON A. JENKINS, *Secretary.*

Hon. JAMES GUTHRIE, *Secretary of the Treasury.*

List of papers.

No. 1. Letter of Mr. Bartlett, and enclosures, dated September 28, 1844.

No. 2. Copy of letter from Treasury Department, dated June 16, 1852.

No. 3. Copy of letter from Treasury Department, dated January 31, 1853.

No. 4. Abstract and account current No. 1, with two vouchers and sub-vouchers.

No. 5. Abstract and account current No. 2, with thirteen vouchers and sub-vouchers.

No. 6. Abstract and account current No. 3, with two vouchers and sub-vouchers.

L.

WASHINGTON, *May* 18, 1856.

SIR: I learn by yours of the 16th instant, that on Monday you intend to examine the witnesses on the specifications contained in your letter of the 9th instant, a list of whom I furnished in my notes of the 10th and 12th. I presume you have subpœnaed or invited these witnesses. Whether they are all present I do not know. If not present, it will be for you to determine whether you have given such timely notification as has enabled those at a distance to be here, and whether in their *absence* you will consider it proper to make up

your report *without them*. These are questions which you must dispose of as to you may seem proper under the circumstances. The list furnished by me was confined, as you desired, to the names of witnesses to the *specific heads* suggested by you. The committee will, however, not forget that if the OPINIONS of certain witnesses examined by them, *and their belief as to what others believed* in reference to my standing as an officer and a man, are to constitute in the least degree an element of their conclusion upon this case, I shall confidently calculate upon their examining the witnesses, or so many of them as may satisfy the committee, contained in the two lists to be found in my printed letter at page 62, and thus designated:

"Witnesses as to my professional standing and character, under whom I have served."

"Officers of the navy generally."

I herewith enclose interrogatories as to the leading points of the subject under investigation, with the desire that each may be distinctly propounded, and the answer to each one written down in the precise language of the witness. I offer this as a suggestion merely.

I am, respectfully, your obedient servant,

WASH'N A. BARTLETT.

Hon. S. R. MALLORY,
Chairman Committee Naval Affairs, United States Senate.

P. S.—The intorrogatories for E. H. Harrison and James W. Bingham, esquires, will be forwarded to the committee by the time of the arrival of those gentlemen, which I hope will be to-morrow.

W. A. B.

M.

Interrogatories for A. D. Bache, Esq., Superintendent Coast Survey.

1. What is your position under the government, and how long have you held it?
2. Do you know Washington A. Bartlett? If yea, how long have you known him, and in what capacity as an officer?
3. Was, or was not, Lieutenant Bartlett selected by Lieutenant W. P. McArthur (to whom you assigned the direction of the hydrography of the western coast in 1848) to take the surveying schooner Ewing to California with your consent and approval?
4. How did Lieutenant Bartlett conduct himself in the performance of that duty; to your satisfaction or otherwise?
5. Was, or was not, the success of the work of 1849–'50 on the western coast much facilitated by his zeal and devotion to his duties?
6. You being his (Bartlett's) chief, was any report ever made to you, in writing or verbally, of any bad conduct or dishonesty in the discharge of his duties?
7. Would you, or would you not, have continued Bartlett on the

work as its chief after the death of Lieutenant McArthur, if he, Bartlett, had desired to continue?

8. Did Lieutenant McArthur, or any other officer or person engaged on the coast survey, or out of it, ever make any report to you intending to impeach the character of Bartlett as an officer or gentleman?

9. Did you not, and do you not, consider Bartlett in all things an efficient sea officer, and capable of all the emergencies of any service to which he might be assigned?

10. Have you had any personal knowledge of Bartlett as a gentleman, independent of his official relations with you?

11. If yea, state what impression your more intimate acquaintance with him has produced upon your mind?

12. Has, or has not, so far as you know and are able to judge, the personal conduct of Mr. Bartlett been such as to commend him to your sympathies and esteem?

13. What is Bartlett's general character for probity?

14. It has been stated by a member of the Naval Board that "he (Bartlett) traded along the western coast, in some cases smuggling the goods on shore;" was any such report ever made to, or through, you to the department; was any such report current amongst the officers of the coast survey; did Lieutenant McArthur, on taking command, say or do anything which should have led you to believe that any improper act had been committed by Bartlett?

15. From your knowledge of the character of Lieutenant McArthur, do you suppose that he would have failed to report any such acts of delinquency as those alleged against Lieutenant Bartlett?

16. If you say you have known Mr. Bartlett for some years, state whether his character and conduct have merited your approbation?

N.

Questions which Mr. Bartlett would address to Commodore Jones.

Commodore Jones:

Interrogatory 1. Were you in command of the Pacific squadron in the year 1849; and were you at that time frequently at San Francisco? If not in command, what position did you occupy?

Interrogatory 2. Did you know of the schooner "Ewing" being commanded by W. A. Bartlett, and subsequently by Lieutenant McArthur, while on the Pacific coast?

Interrogatory 3. It was stated by a witness, before the committee, "*that it was known to one or more members of the Naval Board that his (Bartlett's) conduct on board the surveying schooner Ewing was discreditable to him, and believed to be dishonest.*" Be good enough to state whether, while in command of the squadron or otherwise, or at any other time prior to the action of the Naval Board, you ever heard of any conduct of Bartlett's, as connected with the "Ewing," either of a "discreditable" or "dishonest" character?

Interrogatory 4. Were you acquainted with Lieutenant McArthur and the other officers of the Ewing? Did you have frequent conversations with said officers during your and their stay on the Pacific coast? Did you ever hear of Bartlett's using the Ewing for the purpose of conveying goods and of smuggling them into San Francisco after their arrival there? Did either of the officers ever make such an allegation to your knowledge; and is it at all probable that such transactions could have taken place without your knowledge of them?

Interrogatory 5. After the arrival of Lieutenant McArthur, did he succeed Mr. Bartlett in command of the Ewing? Have you ever had any conversation with Lieutenant McArthur subsequent to that period? *Could Bartlett have used the Ewing for such a transaction without the knowledge of the officers of the vessel;* and would not such a transaction have been reported to McArthur on his taking command? Be good enough now to say if you had any conversation with McArthur *subsequent* to his taking the command of the Ewing in which Bartlett was spoken of; if yea, state what was the opinion of McArthur of Bartlett's standing as an officer and his character as a gentleman, as then expressed?

Interrogatory 6. If you knew McArthur, be pleased to state what was his standing, and whether it was such as to repel the idea that he would in anywise conceal or palliate conduct in a brother officer which was either "discreditable" or "dishonest?"

Interrogatory 7. Do you know Mr. Bartlett sufficiently well to speak of his character as an officer and as a man; if yea, state fully your opinion of it, and say in what estimate it was held by his brother officers?

Interrogatory 8. If you know anything to the benefit of Mr. Bartlett, showing his efficiency as an officer both ashore and afloat, state the same as though particularly interrogated?

O.

Interrogatories for A. C. Rhind, Esq.

1. Were you ever a lieutenant in the navy? If so, when; and what was your rank in 1848–'49?

2. Were you ever executive officer of the schooner Ewing, under command of Lieutenant Bartlett? If yea, did you not, as such executive officer, have charge of the general duty, storage and discipline of the vessel; and was it possible that clothing and merchandise could have been conveyed in that vessel and smuggled on shore without you having known it.

3. Look at the letters on pages 20 to 23 of the printed letter of Bartlett to the Naval Committee, and say whether they are correctly stated?

4. Do you know of any act of Bartlett's, while attached to or commanding the Ewing, which could warrant the assertion that his

"conduct was discreditable to him as an officer, and believed to have been dishonest?"

5. Did or did not Bartlett, while in command of the Ewing, discharge his duty with fidelity to the government and due consideration of all placed under his command; and was, or was not, the vessel commanded by him in a seaman-like manner?

6. Was, or was not, Bartlett also acting purser as well as commander of the vessel; and if yea, was he not charged with providing for the comfort of the crew?

7. Was there room in so small a vessel for any very considerable supply of clothing, after the vessel was stowed with provisions for so long a voyage?

8. Was the Ewing, her boats or crew, ever used by Bartlett for the purpose of trading or smuggling, or any other purpose than ship's duty?

9. Did or did not Bartlett often go from and return to the vessel in shore boats at a heavy expense to himself, rather than use the ship's boats?

10. Were you not attached to the Ewing as long as Bartlett held the command?

11. Please state anything you may wish regarding the official conduct of Mr. Bartlett as fully as if you had been particularly interrogated on that point.

P.

Interrogatories for Commander Cadwalader Ringgold, United States Navy.

1. What is your rank in the navy; was it the same in 1849, 1850? Were you at San Francisco in 1849, 1850? If yea, did you know of the fact that Lieutenant Washington A. Bartlett was there?

2. In what capacity did he arrive there?

3. Were you acquainted with the principal officers and citizens at San Francisco?

4. Were you acquainted with the estimation in which Lieutenant Bartlett was held by that community?

5. Did you know or hear of anything taking place there in connexion with Lieutenant Bartlett while commanding the Ewing, or subsequently, derogatory to his character as an officer and gentleman?

6. Is it not certain that you must have heard it spoken of, if any act of his had made his conduct odious, among either his brother officers or the citizens?

7. Did you, while at San Francisco, ever hear it charged by any one that Lieutenant Bartlett "had traded along the coast, in some cases smuggling the goods on shore," or any charge to that effect?

8. When an officer is the commander and acting purser of a vessel, is not the whole responsibility of providing in advance for the comfort

and efficient service of his crew in the hands of, and at the discretion, in a great degree, of the officer so commanding; and is it not the duty of an officer, when engaged on special service, to exercise his best judgment as to how he is to accomplish the end for which he is sent?

9. Have you known Lieutenant Bartlett for a series of years? If yea, what has been your appreciation of his general character for honor, integrity and truthfulness?

Q.

Interrogatories for Captain J. B. Montgomery.

1. Do you know Washington A. Bartlett? If yea, state how long you have known him; if he has ever served under you as an officer; state when, where, for how long a time, and in what capacity?

2. If you say in answer to the first interrogatory that Bartlett served under you as lieutenant, while you commanded the Portsmouth, from 1844 to 1848, be good enough to inform the committee whether any transactions occurred during that period, and more particularly while at Mazatlan and Monterey, connected with Bartlett's conduct as caterer of the mess, which produced on your mind any impression that he had been "culpably negligent," or "dishonest?"

3. Has Mr. Bartlett exhibited to you a printed letter to the Naval Committee? If yea, state whether your letters to him of February 13, 1856, and April 14, 1856, at pages 46 and 53, are not therein correctly set forth and do not express the opinions which you *now entertain?*

4. Look at the statement made at page 16 of said printed letter and say whether the said statement, as to your remark to Bartlett when you returned to him the papers and correspondence connected with the charges brought against him by Lieutenant Missroon and others, is not correctly stated?

5. What is your opinion of Mr. Bartlett as an officer? Do you regard him in every respect capable of "*performing promptly and efficiently all (his) duty, both ashore and afloat?*" State also your opinion of his character as a man?

6. Has anything transpired since the action of the Naval Board and the investigation before the Naval Committee which tends in the least degree to alter your opinion in this particular? If yea, state the same.

7. If you know of anything to the benefit of Mr. Bartlett which shows the charges brought against him to be untrue, state the same fully.

R.

Interrogatories to be propounded to James W. Bingham.

Interrogatory 1. Have you seen the printed reply of Washington A. Bartlett to the charges made against him before the Naval Committee of the Senate? If yea, look at what purports to be an affidavit made by you, at pages 23 and 24, and state whether the said affidavit was in fact made by you?

Interrogatory 2. Turn to Appendix IV, at page 58 of said reply, and state whether the receipt dated August 20, 1849, for the freight of said goods, is not correctly set forth?

Interrogatory 3. Do you know of Mr. Bartlett having ever introduced or imported into San Francisco any other goods than those referred to and paid for in said receipt? Were your connexions with him such as would have enabled you to know if any such transaction had ever taken place?

Interrogatory 4. Did you ever hear it charged or hinted at, in San Francisco, that Mr. Bartlett had in any manner evaded or attempted to evade the revenue laws of California?

Interrogatory 5. Did you know the general character of Mr. Bartlett for probity and integrity? If yea, state what it was and is.

S.

Interrogatory to be propounded to E. H. Harrison.

Have you seen the printed letter of Washington A. Bartlett in reply to the charges made before the Naval Committee of the Senate? If yea, look at the statement at page 24, dated Philadelphia, April 7, 1856, purporting to have been signed by you, and say whether the same was in fact made by you, and does not contain the truth of the transactions therein described, according to the best of your information and belief?

* * * * * * * *

Learning that Mr. Harrison, from indisposition, is unable to attend upon the committee, the committee assume, without submitting to him the foregoing interrogatories, that he would sustain it by his affidavit, and they regard it as if it were sworn to.

T.

Interrogatories for Capt. A. V. Frazer, U. S. R. Marine.

1. What are your relations to the government?
2. How long have you known Washington A. Bartlett?
3. Did you know him as the commander of the United States schooner Ewing? If so, where?

4. Were you in charge of the protection of the revenue in the bay of San Francisco in the years 1849, 1850?

5. Was there at any time any report made to you that Lieutenant Bartlett had defrauded the revenue, and were you ever called upon to investigate such a charge?

6. Look at page 22 of Mr. Bartlett's reply to the Naval Committee, and state whether the letter there printed is a copy of a letter addressed by you to him?

7. If any charge of such a character had ever been made, would it not naturally come to your knowledge?

8. Were not the inspectors of the customs placed on board of ships bound to return all permits to the custom-house when they had delivered goods under them, and would the inspectors allow goods to be landed with such permits?

9. What was the character and standing of Lieutenant Bartlett at San Francisco at the time you were there?

10. Have you had any conversation with any member of the Naval Board, before or since its session, touching the character of Bartlett while in California, and especially in reference to certain allegations about smuggling goods into San Francisco, which conversation you feel at liberty to disclose? If so, please state the conversation, and the name of the officer with whom such conversation was held.

11. Did you ever know or hear while in San Francisco of any charge against Lieutenant Bartlett which could warrant the assertion since made that his conduct had been discreditable and dishonest while in command of the "Ewing?"

12. Were you acquainted with the late Lieutenant Wm. P. McArthur; and if so, do you know in what estimation Bartlett was held by him?

13. If you know any matter or thing which would benefit Bartlett in this investigation, state the same as fully as if you had been specially interrogated thereto.

U.

Interrogatories for J. W. Revere, Esq.

1. Were you ever in the navy of the United States? If yea, when, for how many years, and when did you resign your commission?

2. Did you serve as a lieutenant on board the Portsmouth in the Pacific from 1844–'48, or on that cruise under the command of Captain J. B. Montgomery?

3. Did you know Lieutenant Bartlett as an officer of that ship, and were you a member of the mess with him?

4. Were you cognizant of the fact that there was some complaint or dissatisfaction expressed by the mess as to his administration of the mess affairs by certain parties? If so, how was such dissatisfaction settled or disposed of?

5. As a member of the mess, were you fully satisfied at the time that Lieutenant Bartlett entirely exonerated himself from censure?

6. Look at a letter on pages 60 and 61 of Lieutenant Bartlett's reply to the evidence before the Naval Committee, and state whether you addressed a letter to Lieutenant Bartlett, from which the extracts are published?

7. Was not the caterer who was elected to succeed Lieutenant Bartlett the proper person, according to the usages of the service, to receive the accounts and audit them?

8. Did Lieutenant Bartlett, to your knowledge, ever exhibit the least hesitation in surrendering the catership and his accounts for examination?

9. If a difference of statement should be made by a steward as to the amount of money handed to him, or as to the manner of its expenditure, do not the usages and courtesies of the service give to the officer the right to have his statement taken in preference to any person in such a capacity?

10. Would not a steward, or any servant who might be punished by a caterer for intoxication or other misdemeanor be likely, if he could find support, to array himself against the caterer?

11. Did you ever at any time withdraw your confidence from Lieutenant Bartlett as a man of integrity and propriety of conduct?

12. If you have anything further to say about the conduct of Lieutenant Bartlett as an officer and gentleman in all the relations of the service or society, say it without reserve, as if fully interrogated?

V.

Interrogatories for Henry B. Watson, Esq.

1. Have you at any time served in the United States marine corps, what was your rank, and when did you resign from the service?

2. Did you serve on board the Portsmouth with Mr. Bartlett?

3. Look at pages 14 and 15 of Mr. Bartlett's printed reply to the Naval Committee, and state if the letter therein printed over your name was written by you?

4. Did you, or did you not, succceed Lieutenant Bartlett as caterer of the ward-room mess, June 1845? If yea, did you audit the accounts?

5. Look at the original account filed with the committee, and state whether it is the same account you had in your possession. If you say that it is the original account, state when you returned it to Mr. Bartlett and why?

6. Had Lieutenant Bartlett been at any time arraigned under the charge as stated in the letter sent to him, October 8, 1846, by some of the mess, could you not, with the papers then in your possession, have disproved the allegations in the most conclusive manner?

7. Did you know at any time of any act of Bartlett's during that

cruise which warranted hostility to him, and did any act of his ever impair his usefulness as an efficient officer of the ship?

8. State any thing you know as to the general character and efficiency of Bartlett at sea, and his standing and character as a man.

W.

WASHINGTON CITY, *June* 24, 1856.

SIR: On the 16th day of May last I had the honor of receiving at my residence, Brooklyn, New York, a request, signed by your clerk, to appear before the Committee on Naval Affairs, United States Senate, to testify in the case of W. A. Bartlett, esq., late lieutenant United States navy, to which I replied immediately, both to yourself as well as to the clerk, setting forth the reasons why I could not comply with the request, but expressing my readiness to obey promptly and cheerfully any summons from the committee, which reasons it is unnecessary to reiterate here.

I am now on a visit to this city, the duration of which is limited by the department to one week, and learning from naval officers that my non-appearance at the time designated was attributed to a desire to avoid the examination, I have the honor to inform you that I am prepared to attend the committee at any time they may desire within the limited period allowed me, or at any other time when my presence may be commanded.

I am not aware how my testimony may affect Mr. Bartlett, but am ready to testify to all I know about him.

I have the honor to be, very respectfully, sir, your obedient servant,

ALEX. V. FRASER,
At W. F. Bayley's, Stationer, Pennsylvania Avenue.

Hon. S. R. MALLORY,
United States Senate.

X.

SENATE NAVAL COMMITTEE ROOM, *June* 26, 1856.

SIR: I am instructed by the Committee on Naval Affairs of the Senate to acknowledge the receipt of your letter of 24th instant, and to inform you that the committee, having finished its investigation of the case of Mr. W. A. Bartlett, late lieutenant United States navy, will not desire your attendance for the purpose of procuring your testimony therein.

Very respectfully, your obedient servant,

C. W. DOWNING,
Clerk Committee on Naval Affairs, United States Senate.

ALEX. V. FRASER, Esq.
At W. F. Bayley's, Stationer, Pennsylvania Avenue.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 237.

MEMORIAL

OF

WASHINGTON ALLON BARTLETT,

ASKING

That certain papers may be ordered to be printed.

AUGUST 1, 1856.—Ordered to be printed, together with his reply and other papers, as an appendix to report No. 237.

IN THE SENATE OF THE UNITED STATES, *August* 1, 1856.

Resolved, by the Senate, upon the memorial this day presented to the Senate by Washington Bartlett, that all the papers and documents referred to in said memorial, and prayed to be printed as part of, or as an appendix to, the report of the Committee on Naval Affairs in his case, be, and the same is hereby, ordered to be printed, according to the prayer of said memorial.

Attest:

ASBURY DICKINS,
Secretary.

APPENDIX.

To the Senate of the United States:

The memorial of Washington Allon Bartlett, late a lieutenant in the navy of the United States, respectfully represents:

That at the present session of Congress your memorialist presented to your honorable body a memorial complaining of the action against him, based upon the recommendation of the board of naval officers, convened under the provisions of the law of February 28, 1855, entitled "An act to promote the efficiency of the navy," by which he was dropped from the rolls of the service, which memorial was referred to your Committee on Naval Affairs; that the said committee made an examination into his complaint, and on the 22d day of the present month presented a report to the Senate, which has been printed by your order, and is now a portion of the public records of

the country. Whilst your memorialist disclaims any intention to cast the least reflection on your said committee, he conceives great injustice has been done him by the omission to make a certain paper which, at the instance of the committee, he had submitted to them as a reply to the several charges and allegations against him, a part of their report. Frequent reference is made to said paper in the report, but the references cannot be fully comprehended unless opportunity is afforded for an examination of the entire document.

It is not the province of your memorialist to enquire whether your committee was authorized to assume the powers of a judicial tribunal, summon witnesses, administer oaths, receive and entertain charges against him by witnesses directly interested in destroying his character and reputation, and at the same time omit to compel the attendance of witnesses in his behalf. All these enquiries properly belong to your honorable body, and not to your memorialist. But your memorialist, in common with every American citizen, has a right to complain when an act of injustice, whether intentionally or not, has been done him by the constituted authorities of the country, and in the exercise of this inestimable privilege he represents to your honorable body that the omission of the said committee to make his said reply a part of their report is calculated to do him great wrong and injury. Charges which were made by some of the witnesses against your memorialist, seriously affecting his character for integrity and fair dealing, and which if not refuted would have consigned him to everlasting infamy and disgrace, are set forth in the minutes of the evidence printed with the report, yet their refutation, which is most conclusive by the evidence contained in the reply of your memorialist, does not appear, neither is the fact mentioned in the report that they were so refuted.

Your memorialist therefore prays that the accompanying "reply to the testimony taken before the Naval Committee of the Senate with an appendix of official documents," presented to the said committee, at their request, on May 6, 1856, may be received and ordered to be printed, and also that a similar order may be made in reference to all such documents, letters and papers as were presented to the said committee in behalf of your memorialist, and which do not accompany their report, so that his case can be properly understood.

And your memorialist will ever pray, &c.

WASHINGTON ALLON BARTLETT,
of New York.

WASHINGTON CITY, *July* 31, 1856.

WASHINGTON, *August* 1, 1856.

SIR: The schedule herewith covers the whole pamphlet with its appendix of official documents, and the various letters (which were not printed in the pamphlet) filed with the committee by Governor Jones.

These last named letters, whose names and dates, (as they are

original letters) I cannot recollect, are with the committee, having been sent in by several officers and principally refer to the mess bills.

Very truly yours,

WASH'N A. BARTLETT.

Hon. J. J. CRITTENDEN.

P. S.—The whole pamphlet to be printed.

Schedule of papers connected with the case of Lieutenant Washington A. Bartlett, submitted to the Committee on Naval Affairs of the Senate, and not embraced in their printed report. Document No. 237, 34th Congress, 1st session.

1. The whole pamphlet and appendix. Reply of Lieutenant Washington A. Bartlett to the testimony taken before the Naval Committee, and transmitted to said committee by his letter of May 7, 1856, in pursuance to the instructions of said committee, as per their letter of March 25, 1856, "to produce such explanations touching the subject of their inquiries as to you (him) may seem expedient."

This reply of Lieutenant Bartlett contains the following documents, not printed by the committee, which are important to a proper understanding of the subject:

Letter of Henry B. Watson, esq., late of the United States marine corps, now of Aline Park, near Smithfield, North Carolina, who succeeded Lieutenant Bartlett as caterer on board the Portsmouth, and audited the accounts of Lieutenant Bartlett.—(For letter see pages 14 and 15 of reply.)

Letter of J. W. Revere, esq., late of the United States navy, Morristown, New Jersey, dated April 29, 1856, on the same subject.—(See pages 60 and 61 of reply.)

Letter of Captain J. B. Montgomery, April 14, 1856.—(See page 53 of reply.)

Letter of R. Forrest, United States navy, April 30, 1856.—(See page 54 of reply.)

Certificates of T. L. Smith, First Auditor of the Treasury, and H. J. Anderson, Commissioner of Customs, esqrs.—(See pages 61 and 62 of reply.)

Account at Fenton's Hotel, London.—(See page 63 of reply.)

Letters of Lieutenant Thornton A. Jenkins, secretary of the Lighthouse Board, dated October 15, 1852, March 14, 1853, and May 16, 1853.—(See pages 63, 64, 65, 66, 67, and 68 of reply.)

Letter of Commodore William B. Shubrick, Chairman Ligh-house Board, to the Secretary of the Treasury.—(See pages 64 antd 65 of reply.)

Letters of A. D. Bache and H. J. Anderson, esqrs.—(See page 68 of reply.)

Letter of Hon. John Y. Mason, United States minister at Paris, dated September 2, 1854, to the Secretary of the Treasury.—(See page 71 of reply.)

List of witnesses.—(See pages 51 and 52 of reply.)

Letter of Washington A. Bartlett to the Secretary of the Navy, April 1, 1856, and answer of the Secretary.—(See pages 40 and 41 of reply.)

Letter of T. L. Smith, esq., First Auditor of the Treasury, April 21, 1856.—(See page 37 of reply.)

Letters of Hon. James Guthrie, Secretary of the Treasury, and abstract of vouchers on file in the Treasury Department.—(See pages 33 and 34 of reply.)

Letter of Hon. W. L. Hodge, April 28, 1856, and three letters of W. A. Bartlett to the Secretary of the Treasury.—(See pages 29, 30, 31, and 32 of reply.)

Letters of A. C. Rhind, late Lieutenant United States navy, at pages 20, 21, 22, and 23, and letter of Captain S. F. Dupont, at page 20; also, letters of C. C. Simms, United States navy, at page 21, and Captain Alexander V. Fraser, at page 22 of reply.

An account current between Delazon Smith, esq., and W. A. Bartlett.—(See page 20 of reply.)

A receipt, signed by Alfred Robinson, at page 58 of reply.

Letter of Captain J. B. Montgomery, dated February 13, 1856.—(See pages 46 and 47 of reply.)

Certificates or letters from sundry officers of the navy upon the subject of mess bills in the Pacific. Filed by the Hon. J. C. Jones, of Tennessee.

Reply of Washington A. Bartlett to the testimony taken before the Naval Committee of the Senate, a certified copy whereof was furnished by consent of the said committee, with an appendix of official documents and testimonials referred to, May, 1856, *communicated to the Senate July* 31, 1856, *as annexed to memorial of same date, by Washington A. Bartlett.*

To the Naval Committee of the Senate:

Having, by your permission, been furnished by the clerk of the committee with a certified copy of all the evidence taken before you, in the investigation which you have been pleased to make into the propriety of the action of the Naval Board, by which I was "dropped" from the naval roll while in the service of the country on foreign seas, I now proceed to redeem the promise heretofore, by letter, communicated to you—"that when the committee shall have concluded their examination, and will furnish me with any statements that affect me as an officer, and which in their judgment tend to sustain in any degree the propriety of the action of the Naval Board, I pledge myself to make a full, frank, and satisfactory explanation of them; and that the truth of that explanation, if it did not by its own nature carry conviction to every reasonable mind, shall be made good by those evidences which the law has heretofore recognized as full legal proof."

Much of the testimony before me consists of the opinions of certain

of the witnesses as to how they and others estimate me. Tried by this uncertain standard, I confess I should be found not only unworthy a place in the navy, but unfit for the discharge of the ordinary relations of life. But mere opinion as to the moral worth of an officer presents no issue for trial. It may be a shield for the protection of the witness, but can never be used as a sword against the accused. I therefore dismiss for the present from my consideration all that portion of the testimony which has no other basis than the mere opinion of these witnesses, deeming it wholly immaterial to inquire whether it has its origin in malignity, or in the still baser source of that self-interest which renders it necessary to sustain the Naval Board in its fierce struggle with the public opinion of the country, by defaming the character of those who have fallen under its arbitrary proceedings.

As to the facts testified to, they deserve, and shall receive, such a refutation at my hands as time and opportunity permit me to give. They may be thus stated:

1. That while an officer on board of the Portsmouth, 1844–'48, I had speculated in the purchase of a library, and meanly solicited subscriptions thereto.

2. That at Monterey, 1846, I had sold an India shawl to a lady of that city, at an exorbitant profit, and that I had also been guilty of selling segars and articles of apparel to officers and others.

3. That I had been culpably negligent and dishonest in the discharge of my duties as caterer for the ward-room mess, at Mazatlan, 1846, and on our voyage thence to Monterey.

4. That while in command of the Ewing, 1849, on the Pacific coast, I had smuggled into San Francisco certain goods, which I had used the Ewing to convey.

5. That I had fraudulently attempted to obtain from the Treasury Department, 1854, more money for my expenses while in France, as the special agent of that department, than I was entitled to.

Taking up these several charges in their order, let us inquire into the evidence upon which the first charge rests.

Purser James H. Watmough says. The introduction of the library "was commented upon as being officious;" "that the sum of $90 was collected for it from the officers;" that he "don't think there were $90 worth of books, but don't know." This witness further says, that he was under the *impression* that an application was "intended to be made" to the crew of the Portsmouth to subscribe to the library, and that an order was given to stop it; that he "don't remember that the library was taken on board the Portsmouth by consent of officers," and "don't think there were one hundred volumes;" "thinks none of the crew paid anything towards Bartlett's library, only officers;" "don't know that Bartlett withdrew the subscription list; don't know, positively, about an order being given to stop the list."

Pendleton G. Watmough says, in reference to this matter: "It is not unusual to have libraries, and for sailors to subscribe; thinks he subscribed to Bartlett's library, but don't recollect; has no recollection of giving his consent to said library."

Lieutenant Missroon states:

"In the case of soliciting subscriptions to his library, I heard it

stated by the individuals themselves to whom he applied; among others, Mr. Delazon Smith and Dr. Chase stated that he had asked for five dollars for the perusal of his books, and it was notorious that both these gentlemen were merely passengers to the Pacific. It became know to me, in the exercise of my official duties, that Mr. Bartlett authorized a subscription list to be circulated among the crew of the Portsmouth, contrary to my express order issued to Mr. Bartlett, that no such list should so issue until the crew could examine the books gratuitously furnished them by the government. When detected in the disobedience of a proper order, he endeavored, but failed, to show that he had not authorized the circulation of the subscription list among the crew."

I should be utterly at a loss to know the precise character and extent of the criminality which is supposed to be connected with this matter of the library, were not its specific nature declared by Lieut. Missroon, in his official letter of October 16, 1846, in which it is thus denounced: "In speculating upon a private library, and meanly soliciting subscriptions of money from individuals, some of whom, it was well known, would not continue in the ship longer than her outward passage, and among whom was a public functionary."

My answer to this charge is brief and simple. Actuated by what I supposed to be a laudable desire to beguile the tedium of a long cruise, and at the same time to elevate the intellectual character of the officers and crew, and contribute to the good conduct and discipline of the latter, I entered into an agreement with Messrs. Harper & Brothers, for 278 volumes of useful and interesting works, for which I became responsible in the sum of one hundred and eighty dollars, which I have since paid in full. These books were introduced on board the Portsmouth, with the express assent of the commander, as exhibited in his letter, hereafter subjoined. Most of the officers, including the brothers Watmough, contributed to the expense, and I received eighty-five dollars, leaving myself minus one hundred dollars, (adding five dollars paid for book cases.) The crew offered to subscribe whatever was necessary to make up the deficiency, but did not, in fact, contribute one dollar, nor were they ever solicited to do so by me. If there be, in the estimation of any reasonable man, anything of the "meanness," "officiousness," or "speculation," which has been attached to this simple transaction, I shall have to confess my "perceptions" are "blunted," indeed.

It is utterly untrue that I ever charged or received, or desired to receive, anything for merely *reading* these books, which were freely used by all, whether subscribers or not; nor did I ever apply to Mr. Delazon Smith, the "public functionary" alluded to, either to subscribe or pay for their perusal. Even Lieut. Missroon himself, although not a subscriber, occasionally enjoyed the convenience of this obnoxious library; but whether he thereby became, in the slightest degree, liable to a recrimination of "meanness" or "speculation," I leave to casuists to determine. The books were, from the begining, made the absolute property of the officers and crew, and in charge of a librarian selected by the ship's company. They did not revert to me.

As a satisfactory conclusion to the evidence on this point, I submit for your consideration the following extract of a letter from the com-

mander of the Portsmouth, Capt. J. B. Montgomery, U. S. N., dated April 14, 1856: *

"At the time you reported to me at Portsmouth, N. H., for duty on board of the United States ship Portsmouth, in November, 1844, or thereabout, you informed me that, at the suggestion of the Messrs. Harper, of New York, you had brought with you a well selected library for the use of the crew, which that firm had offered to dispose of at an unusually low rate of cost, provided the men were willing to pay for them by voluntary subscription, and I would permit them to be received in the ship, otherwise, that you were requested to return them to New York. Feeling no disposition whatever to oppose an arrangement calculated, as I conceived, to enlarge the sphere of rational amusement and improvement for the ship's company, I referred you to the executive officer, with directions to say to him I had no objection to the reception of the books upon the proposed conditions, and they were taken on board, and I believe generally used by the reading portion of the crew during the long cruise that followed. I saw nothing in the transaction on your part, at the time, nor do I now, that could in anywise attach censure to your conduct, or cause me to question the integrity of your motives in the premises; and I have no doubt the recreation derived from the perusal of said books contributed in no small degree to the contentment and satisfaction of the crew, so remarkably prevalent in the Portsmouth throughout the whole cruise."

The next charge is thus preferred by Lieut. Missroon: "In the case of selling goods to his brother officers, from the state room, I knew by the remarks of Dr. Chase that Mr. Bartlett sold some cloth to him, and from Mr. Delazon Smith, a public functionary of the United States, that he had purchased shirts and other articles of Mr. Bartlett, for which a bill was duly rendered, as 'bought of Lieut. Washington A. Bartlett.' I heard at the time of many other instances of sales of clothing and segars. When spoken to, officially, by me, as the executive officer of the Portsmouth, of the impropriety of his conduct in regard to the above, Mr. B. did not deny the charge, but stated it was done as an accommodation to others." In his letter of October 16, 1846, the same charge is thus expressed: "For unofficer-like conduct, in bringing to sea a stock of clothing, cloths, segars, &c., which were vended to his brother officers and others, making his state-room a kind of huckster shop, and degrading thereby the respectability of the ward-room." In support of this allegation, Purser Watmough also testifies: "There was a Mr. Smith on board as a passenger, in the character of a public functionary. Bartlett sold him (Smith) twelve shirts at one dollar each. Thinks he saw the bill, but is not certain. This was a matter of notoriety on board the ship. The mess laughed at it."

The amount of this charge is, that I have been stigmatized as *guilty* of selling certain articles which it is not denied I had the right to sell. So far as it be intended to charge me with purchasing any article for the purpose of barter or trade, I deny the statement to be

* For the entire letter see Appendix I.

true. At the same time I admit, without reserve, that on two or three occasions I parted with articles for which I had either no use, or where the sale was for the accommodation of others. In one instance, not mentioned in the testimony, I sold to Lieut. Forrest* a quantity of segars, having ceased to smoke; another instance is the supply of shirts furnished to Mr. Smith. The value of the particularity of the witnesses in a detail of facts will be seen by reference to the copy of the receipt, exhibiting our mutual transactions.

LIMA, *May* 6, 1845.

Delazon Smith, Esq., in account with W. A. Bartlett.

DR.

To cash paid Mr. Vanderbrand at Rio, and receipt rendered, (paid while Mr. S. was ill,)	$21 00
Cash paid wash bill	3 29
FIVE *Shirts* at $3	15 00
Sheets, p. cases	3 00
	42 29

CR.

By bal. overpaid me on purchase of shirts, &c.,	$1 00
Loan of 10 sovs.	50 00
" " 16 sovs.	80 00
	131 00
Mem. opposite Dr.	42 29
Bal. due.	88 70
By return of five sov.	25 00
Cash paid in full.	68 71

Received of Lieut. W. A. Bartlett eighty-eight dollars and seventy-one cents, in full for the above, and all, any, or several of our monetary transactions, *private* or *mess—in fact* or *implied.*

DELAZON SMITH.

The principal specification under this charge relates to the sale of the shawl.

Purser Watmough says:

"Bartlett sold a shawl in Monterey to a lady on shore; said shawl cost Bartlett $7. The lady told witness she gave $10 for it; witness saw the shawl on the lady's shoulders, and at once identified it; never said anything to Bartlett about it, &c."

Purser Watmough is the sole witness as to this matter. He gives a *hearsay* statement, said to be derived from the lady in question. Let

* Vide Appendix II.

us see what shape it assumes after its double filtration through Lieut. Missroon's sieve. This gentleman states distinctly that *he derived his information from Purser Watmough.* In the "official letter" of October 16, 1846, he thus characterizes the affair:

"In disposing of, at *private and secret* sale, to a lady at Monterey, an article of dress at an exorbitant advance upon its cost, and when detected and exposed in it withdrawing the article, thus showing his consciousness of the impropriety."

In his testimony before the committee, he says he charged me with *smuggling* the shawl. In this letter there is no intimation of *smuggling*, and Purser Watmough, his sole authority, says, on his examination, he "*did not say Bartlett's shawl was smuggled.*" Watmough says the shawl cost $7, and the "lady told" him she gave $10. Missroon says, in his letter of October 16, it was sold at "an *exorbitant advance* upon the cost." This assertion he repeats in his testimony before the committee. In the letter of October 16, he says, "it was disposed of at *private* and *secret* sale." Watmough, his sole informant, neither says nor intimates any secrecy whatever.

I leave it to these witnesses to settle such glaring discrepancies between them.

I will but add its true history:

In 1846 we met at Mazatlan the Constitution frigate, just from China. Her officers had collected various articles of oriental manufacture. Many of them were purchased by the officers of the Portsmouth. I thought then, as I think now, that there was no disgrace in a sale or purchase by officers, and accordingly purchased several small articles, among them a shawl, for which I gave $7. Mr. Missroon and Dr. Duval have, however, changed their opinion since that time, for they both purchased, and both afterwards sold, a portion of what they had bought. Some of the purchases of Duval (made in China) he sold to me; and some of those of Missroon he sold to Captain Montgomery. I do not mention these circumstances as at all derogating from the character of these officers, but only to exhibit the radical change which their opinions, as to what was honorable and officer-like, has undergone. I am informed, by the party to the transaction, that the commander in chief of the squadron* sold to a gentleman of Monterey a shawl which he had obtained in China.

While at Monterey I presented this shawl to a lady, who had expressed in my presence a desire for one of the kind. The conversation which led to the presentation was held in the presence of the wife of the American consul at Monterey. The lady, whose husband was absent, desired to pay for the same. This I positively refused. Subsequently, and upon the return of the husband, he insisted upon my accepting from him a horse, which, I presume, was worth some eight or ten dollars. The lady to whom the scarf was presented is dead, but the witness to the transaction yet resides in California, and will, I trust, ere long, enable me, by her statement, to show the gross misrepresentation which has been made of this transaction.

I now come to the most serious and important accusation—referring

* Since deceased.

to my administration of the mess accounts. To sustain this charge but two facts are stated, viz: that there was some discrepancy between the steward* and myself as to some of the items of the accounts; and that there was a want of a proper series of vouchers. The testimony of the witnesses on these points is as follows:

Watmough says: "Bartlett stated he had given the steward such an amount; the steward denied it." Henderson says, "that when Bartlett submitted his accounts as caterer of the mess of the Portsmouth, there was a want of a proper series of vouchers." Again: "In the vouchers submitted by him certain daily expenditures were charged for marketing which the ward-room steward asserted were incorrect and too large. This, upon being pointed out to Bartlett, was altered by him to suit the assertion of the steward by changing and deducting the amounts in certain items and adding to others, although the aggregate amount remained unchanged." Dr. Duval says that "the mess asked Bartlett for a statement of his account, but he could not render a satisfactory one; however, he did make a statement, which contained inconsistencies that were pointed out to him. He therefore altered it in various particulars, but only made it more confused." Dr. Duval also states: "Bartlett told him, when he joined the mess, that his mess account would be, for initiation $43, and regular account $30, all of which witness paid him. On the arrival of the vessel at Monterey the purser informed witness that Bartlett had drawn $30 on witness' account for mess," &c.

After the lapse of nearly ten years, I am called on to defend myself in the matter of an account involving the expenditure of numerous small items, for many of which, in the nature of the expenditure itself, no voucher is ever obtained. The daily marketing for the mess was made by the steward, with money furnished by me, and those items were transferred into my account from information furnished by him. Upon the examination of the account, after dissatisfaction expressed by the mess, the steward differed with me as to the price of some of the items, and the corrections were made accordingly—some being charged at more than the cost, and some at less than originally returned by him. But the true point of complaint was with the aggregate amount expended, and not the cost of the several items; and upon this point the witness (Henderson) expressly admits, that "*the aggregate amount remained unchanged.*" As to all the other items of expenditure made by me, I obtained vouchers, and these vouchers I have now in my possession, ready to be produced.

When I threw up my catership, and handed over my vouchers, an investigation was had by some of the members of the mess. From these vouchers, and such information as could be gathered from the steward and other sources, an account was made up by Purser Watmough, or with his assistance. This account, in *his own hand-writing*, and proved by him before the committee, is now presented, together with my own, that their difference and correspondence may be particularly seen. Yet, notwithstanding his active participation in this transaction, this

* This man's character will appear from the letter of H. B. Watson, esq., *infra*.

very reliable witness stated in his examination, before the exhibition of this paper, that "*he did not himself examine the account.*"

[A.]

WATMOUGH'S ACCOUNT.

Fifteen days' marketing	$64 06
Poultry and sugar, (Stapp's bill,)	90 50
Squashes and vegetables	10 00
Bill brig Sirius	18 25
Lard, (26 lbs., at 25 cts. per lb.,)	6 50
Vermicelli, (25 lbs.,)	6 25
Tin box	50
Porterage	1 00
Mustard and oranges	3 25
Tomatoes and onions	3 50
Baking dishes, plates	3 00
Sugar	3 75
Chickens	2 50
Flour	10 00
Corned beef	3 25
($226 31?)	226 29?
Oysters	1 25
Black pepper	75
Washing	2 00
Twelve turkeys	20 00
Twenty-four ducks, (10 per doz.,)	20 00
Screens	4 00
Rice	2 50
($276 81?)	276 79?
Total amount expended at Mazatlan, when correctly footed up, *he having made* AN ERROR of TWO CENTS	276 81

[B.]

BARTLETT'S ACCOUNT.

John Stapp's bill		$90 50
Squashes and vegetables		10 00
Brig Sirius		18 25
Twenty-six lbs. lard, (25 cts.,)		6 50
Twenty-five lbs. vermicelli, (25c.,)		6 25
Tin box for same		50
Porterage, (two men two hours,)		1 00
Mustard, 75c.; oranges, $2 50		3 25
Tomatoes, $2; onions, $1 50		3 50
Baking dishes, $1 75; plates, $1 25.		3 00
Twenty-five lbs. sugar, 20th March.		3 75
Four chickens, 62½ cts. each		2 50
Flour, (one sack,)		10 00
Corned beef bill, forgotten by Dr. Wood		3 25
		162 25
Williams, for fresh oysters		1 25
One pound black pepper		75
Washing table cloths		2 00
Twelve turkeys		20 00
Twenty-four ducks		20 00
Rice		2 50
Screens		4 00
Marketing fifteen days		64 06
Total amount expended at Mazatlan		276 81
Received of purser	$200	
Received of Dr. Duval	43	
Received of purser	20	
Received of Dr. Wood	20	
		283 00
On hand		6 19

We now made a passage of twenty-two days at sea, and arrived at Monterey, when the following expenses were incurred as they appear charged on my account current:

April 22d to 28th, both inclusive: milk, eggs, butter, &c		$8 00
Thirteen lbs. butter of Mr. Little		6 50
Mr. Missroon, 5 days		5 12
4th, 5th, and 6th		3 75
7th, 8th, 9th, and 10th		3 50
11th and 12th		1 50
13th, 14th, and 15th		2 25
16th, 17th, and 18th		3 00
19th, 20th, 21st, and 22d		4 25
23d, 24th, 25th, 26th		4 50
27th, 28th, 29th		3 25
Four lbs. butter of Mr. Little		2 00
Fish of Kanakas		1 00
One barrel flour, "Barnstable"		14 00
Mazatlan	$283	
Monterey	175	
	458	
Two pitchers, "Barnstable"		$4 00
Mr. Green's bill		56 00
Do.....do		44 62
		167 24
Cash paid for rice		4 75
Bread and rice of steward		5 00
Washing table cloths		1 75
		178 74
		276 81
		455 55
Paid over to my successor	$2 50	2 45
		458 00

W. A. BARTLETT.

It will thus be seen at a glance that the accounts are identical in their results. In the effort to prove a fraudulent design in the making up of my account, it is stated in the letter from some of the ward-room officers, dated October 16, 1846, "the balancing of his accounts was made by a convenient insertion of 'SUNDRIES,' of which he could give no satisfactory information." It is very evident that this allegation was intended to show that, by the use of the term "sundries," I had availed myself of a convenient cloak to prevent the detection of a fraudulent use of the funds entrusted to me. By reference to the account, which I have exhibited at length, it will appear that no such term is used. My respect for your honorable body prevents my characterizing this statement as it is now clearly proved to deserve. That this account is the identical paper presented to the mess is evident from its intrinsic character, and will be proved, if necessary, by Captain H. B. Watson.

On this subject Dr. Duval also says: "The mess asked Bartlett for a statement of his account, but he could not render a satisfactory one. However, he did make a statement which contained inconsistencies that were pointed out to him. He therefore altered it in various particulars, but only made it more confused." In order that the committee may judge how far the facts warrant these statements, I annex the full statement or explanation submitted to my messmates at the time. (Appendix III.)

If there is anything confused or uncertain in this explanation, I should like it to be specifically pointed out—vague generalities, when character is at issue, I am sure will not be tolerated by any tribunal recognizing the principles of justice for its guide.

I am not content, however, with vindicating myself from the charge of dishonesty, but I desire to say a few words in reference to the allegation of "culpable neglect." "My account shows that my catership commenced on 18th March, and continued to 31st May, 1846, a period of seventy-four days. The mess consisted of nine officers, a steward, cook, and four or five servants. The amount received by me was $458, of which was expended $455 55. There was an amount passed to credit of the mess for ward-room servants' rations, amounting to about $66 25; making the actual outlay of the mess $389 30, being $17 53 per month for each officer during the entire period. While at Mazatlan, fifteen days, the marketing was $64 06, with more or less company every day. But as the ship had to prepare for a forty days' voyage, under sealed orders, provision had to be made accordingly, and hence the bills contracted, amounting to $108 75, "John Stapp," and "Brig Sirius," in addition to the "*items*" enumerated in the account.

We arrived at Monterey on 22d April.

Now the whole amount of money received by the caterer, as shown by both statements, and never disputed, was - - -	$458 00
Deduct amount returned unexpended - - - -	2 50
Leaves the sum of - - - - - - - -	455 50
Deduct amount expended as per acc't at Mazatlan - -	276 81
Leaves the balance of - - - - - - - -	178 69

expended at Monterey, as heretofore exhibited, and of which expenditure no complaint has been made. That a proper economy was maintained in my expenditures may be seen by comparing them with the outlays by Mr. Missroon, who had acted as caterer for five days during my absence.

The acc't shows that he expended for marketing for five days	$5 12½
By deducting the amount of the purveyor's bills - -	138 00
From the whole amount expended - - - - -	178 69
Leaves for marketing thirty-nine days at Monterey* - -	40 69
Missroon's expenditure was therefore per day - - -	1 02½
While mine averaged for 39 days - - - - - -	1 02

There is one other matter in the evidence of Dr. Duval relating to the amount paid by him to me. He alleges that he paid me $43, his initiation fee, as also the sum of $30 on his regular account, and that on the arrival at Monterey the purser informed the witness that Bartlett had drawn $30 on his account. If by this evidence it is intended to charge that Dr. Duval ever paid to me any other sum than his initiation fee on mess account, the statement is simply untrue; no money but the initiation assessment is ever paid by the members of the mess to the caterer; the amounts required are paid by the purser, not for particular members of the mess, but in round sums as required. The pro-rata is subsequently adjusted by him. It will be observed that the doctor also states that the purser informed him that he had paid the sum of $30 on his account to me—now the evidence is at hand to show that in this he is wholly at fault. In Mr. Watmough's account filed with the committee, as an extract from the purser's book, is the following:

Received from the Purser.

Dr. Wood - - - - - - - - - - -	$20
Purser - - - - - - - - - - -	200
Dr. Duval - - - - - - - - - - -	43
Purser - - - - - - - - - - -	20
Do. - - - - - - - - - - -	100
Do. - - - - - - - - - - -	53
Do. - - - - - - - - - - -	22
Total - - - - - - - - - - -	$458

Where is the $30 paid by the purser for Dr. Duval?

It appears that the explanation of my account, which has heretofore been referred to, did not satisfy the gentlemen who now testify against me; and they addressed me the letter of 8th October, 1846, which has been laid before you, in which they charge that, "when you ceased to be caterer of the mess at Monterey, and rendered an account of your office, we became convinced that you had not only betrayed the trust reposed in you by your messmates, by the most culpable negligence, but likewise in a manner far more serious, to which we

* No regular market at Monterey. The purchases were made by purveyor, or at private houses.

only now allude. For this, and for a number of other acts of yours on board of this ship, we have long ceased to have for you the feelings of an equal, and have wished no longer to know you."

It is evident that the gravamen of my offending consisted in my disbursement of the mess funds. This is the only subject specified, the other acts have no specific designation, and need not now be referred to. How I met this outrage on my feelings will be best seen by the letter which I addressed to the commander of the ship, which is here copied:

OFFICE IN YERBA BUENA,
October 15, 1846.

SIR: I am under the necessity of addressing you, concerning a note which I have received, signed by Lieut. Missroon and five other officers of the ward-room mess of the ship, charging me with "culpable negligence in managing the affairs of the mess, and also of betraying the trust reposed in me, in a far more serious manner," "and that, for this, and a number of other acts while on board the ship, they desire hereafter to consider me a stranger."

Charges like the above, sir, cannot be by me received without meeting them, let the consequence be what it may. I meet them with the most positive denial of any foundation in fact, and demand that they be proved or withdrawn.

I place myself on the ground of my entire innocence of any such intent or act as implied in the charge, and upon that ground I will stand or fall. What the "other acts" referred to are I know not; but I feel confident in asserting that any "act" of mine, either public or private, can be explained to any unprejudiced mind in such a manner as to acquit me from any serious offence against the laws of the navy, or propriety of conduct required of me as an officer or a gentleman.

I submit to you, sir, the case, and desire that you call upon them to show why they have taken this course, when there are methods of proceeding so different, and which would give me a fair chance of confronting them, which cannot be expected without others to decide between us.

I shall await, patiently, the time when I can meet these charges on fair terms, either before yourself, or any court of inquiry or court martial, which may be required to bring out the truth, and this matter to a final issue; that issue I have no desire to avoid, and the only reason I did not lay it before you the moment I received the note, was because the exigencies of the service, as you are well aware, required that there should be no interruptions to the preparations for the hurried departure of the forces. Relying on the ground of my entire innocence, and the power of truth, I await the result with all possible calmness, and the continued desire to merit your approbation in the discharge of all my duties.

Very respectfully, sir, I have the honor to be your obedient servant,

(Signed) WASH'N A. BARTLETT,
Lieutenant United States navy.

Com. JOHN B. MONTGOMERY,
U. S. N., commanding Northern District of California.

Lieutenant Missroon, on the 16th of October, writes to the commander, in reply to my demand for an investigation, that the feeling of compassion which had heretofore deterred him from presenting charges against me had been "removed by the assurances which he gives you of the uniform propriety of his conduct, challenging investigation." He then declares his "*immediate readiness to submit charges,*" which charges he distinctly specifies.

I refer, at this time, to this letter, for the purpose of bringing your attention to the fact, that while the charge as to the mess account was the only one prominently presented in the letter of excommunication, and formed the basis of my appeal for a court of inquiry or court martial, that this letter intended as a response to that appeal, while expressing an immediate readiness to meet me, *wholly omits and ignores all mention or allusion to this subject!*

What explanation can be given of this extraordinary omission, but an unwillingness on the part of Mr. Missroon to assume the responsibility which such a charge, before a court, would impose upon him. He was willing to guide his private conduct by suspicion, however unworthy or unfounded, but he dared not follow that guide in his official relation to me. Mr. Missroon, however hostile, has exhibited a wariness on this point which is at least creditable to his intelligence. Dr. Henderson says, in his evidence, that he (Missroon) originally objected to signing the note of October 6, "but that having it pointed out to him that his signature was absolutely necessary, he was induced to sign it."

When Mr. Missroon appeared before you as a witness, he was asked, "Were there any special cases of dishonesty?" His answer is, "He was placed in Coventry for transactions believed to be dishonest, and which he failed to explain satisfactorily, when aware of their doubts of his honesty by his messmates. *But I would rather that other members of the mess now in the country should answer to this inquiry.*"

It thus appears that he not only gave a reluctant signature to the letter of excommunication, and declined to include this specification in the charges, for which he held himself in "immediate readiness," but was also unwilling to make it the subject of testimony before you. Why should he "rather other members of the mess" should testify to this point? If it were an unpleasant duty, ought he to shift the burthen from his own shoulders to those of brother officers? And if he knew the facts which proved dishonesty, was it not his duty to state them, although others might be able to testify to the same subject matter? It will not do to attribute this forbearance to any feeling of delicacy which might arise out of his antagonistical position, for the whole history of the transaction shows that he has never failed to inflict a wound but when he feared to strike.

As to my mess accounts, no member of the mess could be so competent to speak of their character as the gentleman who succeeded me as caterer. To him all my vouchers and documents were submitted, and as suspicion had been excited, they no doubt received from him the most thorough examination. My successor was Captain Henry B. Watson, late of the marine corps. In the emergency in which

your examination of witnesses placed me, I addressed myself to this gentleman, asking his knowledge of that transaction. The following is his reply:

ALINE PARK, NEAR SMITHFIELD, N. C.,
April 21, 1856.

DEAR SIR: Yours of the 11th instant, I regret to say, did not reach me until last night, in consequence of my absence in attendance on the Democratic State Convention, and I hasten to reply, as it may be several days before I can leave home for Washington, which I shall do at the earliest possible moment.

I am not only surprised, but astonished, that the unsustained allegations, (which, in my opinion, were most satisfactorily explained at the time,) that you were culpable of neglect, or seriously guilty of an overt act, impeaching your character as an honest and conscientious gentleman, in the discharge of not only your official duties, but the more arduous duty of providing for your messmates as caterer, while on board the Portsmouth, should have been called up at this late date, for the purpose of stigmatizing your character and throwing obloquy upon your well-earned fame. It exhibits a degree of virulence of design and malicious envy that I did not believe the bosom of an honorable man could have cooped up for so long a time, more especially so, after the very clear and full refutation which the investigation made at the time gave to these allegations.

I now proceed to answer your inquiries; and to your first inquiry, "Was there anything in my conduct as caterer, or in settling up the mess affairs, which could possibly justify or warrant such sweeping assertions or charges, or indeed any charge at all, from certain members of the mess?" I answer, NO! The investigation which was made at the time, in consequence of the marked dissatisfaction of a number of the mess, and which you evinced not only a desire, but an extreme solicitude, should be made, most clearly and fully exonerate you from all censure; and I most certainly believed, even then, when the matter was the subject of mess conversation, that even the surmise that there had been error in your transactions of the mess affairs had been so clearly refuted as to preclude the possibility of its ever being, even in private, much less in so public a manner as it is now, adverted to again.

To your second enquiry: "Did I not render a full and complete account of all disbursements, as shown by bills paid or expenditures made by the steward, in the usual manner in which the catership duty is done?" To this I answer, THAT YOU DID. I conceive it unnecessary to say more in answer to this question, as I do not think it possible that there is any person familiar with the facts who can deny it.

To your third enquiry: "Have you any recollection of the fact, that the 'steward,' for bad behavior, getting drunk, &c., was put in the 'brig' at Mazatlan, just as we were on the point of sailing?" Answer: I DO RECOLLECT THAT HE WAS CONFINED AT THAT TIME, and remained in confinement for a very considerable time, and, as I understood the executive officer (Lieut. J. S. Missroon)

at the time, that he regarded him (the steward) totally unworthy of trust, and so forcibly was I impressed with the fact, on the assurance of the executive officer, of the unworthiness of the steward, that he was not, during the time I was caterer, to the best of my recollection, employed by me as steward; but the duties were performed by Neal, the servant of the executive officer.

Did I deem it necessary to say more, I would do so; but the foregoing are the facts in the matter referred to. I regret, extremely, that I cannot be with you at this time, for I very much fear that injustice may be done you in the absence of a full development of the facts. I trust, however, that such may not be the case.

Yours, with sincere respect and esteem,

HENRY B. WATSON.

WASHINGTON A. BARTLETT, Esq.

This generous and just tribute to the truth is of itself sufficient to vindicate me from what I cannot but regard as a conspiracy—more especially as it proceeds from one whose mind had been originally prejudiced against me.

It is suggested as the opinion of some of the witnesses examined before the committee, and declared by Lieutenant Missroon, "that it appeared to the board (naval) that Mr. Bartlett failed to insist upon or demand investigation," although "a court sat on board of the vessel competent to his trial in November, 1847." This, whether adduced as a matter of mere opinion, or as matter of fact, is disproved by the record evidence before the committee.

By the letter of October 8, I was formally made acquainted with the suspicions of my messmates. From my communication to Captain Montgomery of the 15th October, it will be seen that I promptly met the imputations contained in that letter, and that, instead of exhibiting the "depressed spirit" and the "conscious guilt" which my accusers fancied, I met them with the "most positive denial of any foundation in fact." Not only was the truth of these suspicions or imputations denied, but, instead of pocketing with "conscious guilt," receiving with "dejection," suffering even to "prostration," this formal rupture of companionship, I promptly convert this private cartel into an "official complaint," demand that "they (the charges) should be proved or withdrawn," assert "my entire innocence," declare that "upon that ground I will stand or fall," and that I should "await patiently the time when I can *meet these charges on fair terms, either before yourself or any court of inquiry or court martial.*"

In rejoinder to the letter of Lieutenant Missroon, and the joint letter of the ward-room officers, I refuse to enter into any explanation with them, and express the trust that "I shall yet be able to make good my defence." How? Obviously by a fair trial before the tribunal I had appealed to. This is distinctly the view taken by Captain Montgomery, who, in his letter of the 13th of February, 1856, says: "Allegations were brought to my notice by officers of the Portsmouth at San Francisco in 1846, which you *promply met* by a demand for immediate investigation by court martial or court of

enquiry, which the exigency of the public service precluded at that time."

It will be remembered that this whole correspondence occurred after I had been for some time separated from the ship, and in the discharge of my duties as the first American alcalde and collector of customs in the city of San Francisco.

I closed my civil service in February, 1847, and reported myself at headquarters to Commodore Biddle. I could then have been detached from the Portsmouth, but feeling conscious of the deep wrong which had been done me by my brother officers, I determined to resume my former position. My request to this effect was granted, and I awaited the arrival of the Portsmouth, which I rejoined on the 1st April ensuing, and finished in her the protracted cruise.

I submit with confidence to the judgment of just men, whether these facts warrant the conclusion "*that I had failed to insist on or demand an investigation.*" But where were my persecutors? Their duty, by the terms of the naval code, was plainly set forth. Where was their urgency? What steps have they ever taken to vindicate the character of the service? The only reply is, that after the lapse of nine years, when it might be supposed that malignity had lost its edge, these unfounded suspicions were revamped in the dark councils of the Naval Board, and upon the belief of one of its members as to the character of a transaction, and his belief as to what others believed, made the basis of a sentence by which, unheard and undefended, I have been ignominiously cut off from the service of my country.

When, on my return from the Pacific, my commander handed to me the papers and correspondence connected with these transactions, with the remark that there was nothing remaining against me, I felt that I might rely upon the judgment of a man whose name is a synonyme of official honor and personal purity. My fault, if any, was in not then remembering that malice has no Lethe.

The fourth specification includes the charges against me while in connexion with the Ewing.

The Portsmouth returned to the United States in May, 1848, and in the succeeding December I was ordered to the command of the schooner Ewing, destined to the survey of the coast of California and Oregon. Lieutenant Commanding McArthur was made chief of the hydrograpical party. I was directed to proceed around Cape Horn, and to make my reports directly to Professor Bache, the head of the Coast Survey establishment, and to report my command to Lieutenant McArthur upon our meeting on the western coast—the rendezvous being at San Francisco. Lieutenant McArthur was to proceed across the Isthmus. It was understood, with the concurrence of the superintendent, that *two* vessels were to be employed. The Edith was to have been assigned to us, or some other vessel purchased. One of these vessels was to have been commanded by me. If, however, from any cause two vessels could not be put in service I was to return to the Atlantic coast. I was not to serve as the executive officer of the vessel I had commanded; nor was I to be turned over to the Pacific squadron, which I had recently left, after a service of three years and a half.

I reached San Francisco August 5, 1849, at which time Lieutenant McArthur had not arrived. The topographical party which had preceded us, and whose duty it was to prepare for the hydrographical operations, was actually disbanded, and their instruments stored. Their commander was in San Francisco without force to accomplish any portion of his duties. The joint commission of the army and navy were in camp at Sausolito without the means of transportation. Its officers announced to me that in ten days I would be without a man, as was the Massachusetts, then at anchor in the bay. Reporting myself to the commander of the topographical party, and to the superintendent at Washington, and regreting the non-arrival of McArthur, who was generally supposed to have died on the passage, I put to sea to secure my crew, and await the course of events. Outside, I employed the schooner in giving sailing directions to vessels seeking the port of San Francisco, through the fog and haze incident to that season. Having touched at Bodega for water and vegetables, I returned to San Francisco, and was gratified to find that Lieutenant McArthur had, at length, arrived. I reported my command to him in fine working order, having but four men short of the authorized complement. He informed me that he had already conferred with the chief of the topograpical party, and that it was perfectly clear that enormous contingent expenses would accrue, from any attempt to conduct the operations of the Coast Survey proper, either in Oregon or California, in the then unsettled state of the country, and under the extravagant wages of labor everywhere demanded. That, therefore, it would be impossible to employ even one vessel in the regular operations of the work. That he had reported the facts to the government, and should await the time and opportunity of prosecuting the survey. That there being no duty for me, as contemplated, I was at liberty to take up my residence on shore until the superintendent could be heard from, and official authority received for my return to the Atlantic board. Lieutenant McArthur having assumed the command of the vessel, I left her and took rooms on shore. He determined as soon as the exigencies of the service would permit, to repair to the Sandwich Islands to winter, leaving me in San Francisco, with orders to correspond with the department, and open all dispatches; and, in case my orders arrived, to return and report to Professor Bache.

The Ewing returned in March, and McArthur proposed, that not having heard from the department, I should volunteer to go to Oregon as his principal assistant, for the purpose of attempting to open the navigation of the Columbia river, then closed to commerce through the difficulties of its bars and the ignorance of its channels. He stated, at the same time, that he had no claim to my services in any capacity other than in a separate command; and that if I should decline to go, he would keep his official pledge and order me at once to report in person to the superintendent, and explain to him the obstacles by which the service was surrounded.

Having cheerfully acceded to this suggestion, I accompanied McArthur as his assistant in the survey mentioned, and the subsequent reconnoissance of the coast, from the mouth of the Columbia river to Monterey. These labors occupied us until October. Their value has

been acknowledged by Professor Bache, and by the country, and the difficulties under which they were prosecuted will be shown by the reports.

The foregoing narrative has become necessary in consequence of the confused statement of Lieutenant Simms before the committee, in which he undertakes to say that, during a portion of the time, I performed no duty. The facts stated will be borne out by the official reports of the Coast Survey and the testimony of Professor Bache. I performed the whole duty for which I was sent out, and how it was discharged will not be questioned by any one cognizant of the history of the work.

The letter produced before the committee by the witness above mentioned is in every point of view an extraordinary production. Its crudities scarcely require comment. Its inconsistencies are apparent. It sets forth a complaint that, although nominally attached to the Ewing, I kept no watch, except in some instances, as a matter of favor; and it attempts to reason with the Secretary of the Navy upon the supposed anomaly of my position.

Of this document I had no knowledge whatever prior to its production before the committee. It is mere wasted paper, having, fortunately perhaps for its author, never assumed an official character or been brought to the notice of the department. But it has been treasured and preserved, as I must conclude, as a means of hostility, to which purpose it is now, at least, unquestionably applied.

Lieut. Simms declares under an oath, which, although extra-judicial, he no doubt considered binding upon his conscience, that the statements contained in this communication—which was in its nature and purpose an infraction of the rules and discipline of the service—are correct. Its complaints, growing out of a misunderstanding in reference to my true position in reference to the Ewing, are unquestionably incorrect, as seems to be admitted by the witness in his testimony, when he states that "Bartlett was *apparently* attached to the schooner Ewing, but held no position on board;" and that I was "nominally attached." The statements of this letter consist entirely of the expression of the opinions of the writers upon various matters, which, it is declared, "seem to us strange." There are no facts mentioned in it save *two*. The first is, that my residence ashore was with the "permission" of the lieutenant commanding. The other is, that I was a "member of a business copartnership;" and, as it seems to the bewildered and perhaps somewhat jaundiced vision of my juniors, enjoying, as they express it, "the golden realities and speculations of California." Now, as to the latter statement, repeated in the testimony of Lieutenant Simms, I admit, without hesitation, that I had funds invested in the business of "Bingham, Reynolds, Bartlett & Co." My brother always controlled my interest or investment. I did not contract for, nor did I give my personal attention to the concern. Among the crude and unfledged opinions, and mawkish sentiments of honor abounding in the testimony and allegations against me, there is none more puerile and absurd than the attempt, not directly perhaps, but by inuendo, to reflect and cast obloquy upon me on account of a pecuniary connexion with mercantile affairs. If it seems good to my ene-

mies, I am perfectly content that they shall gnaw that file as long as they desire.

Captain Halleck, of the engineers, while still connected with the army, was the active head of the well known professional firm of Halleck, Peachy, and Billings. Lieutenant Maynard invested his funds in a steamboat line. Lieutenant Blair, of Washington city, engaged in a similar enterprise. The officers upon the western coast, of both services, generally entered into speculations. I am not aware that any injurious imputation has ever attached to any of these gentlemen for such transactions.

That I faithfully performed the special duties assigned to me while attached to the Ewing is admitted by Lieutenant Simms, who says, "so far as surveying was concerned, Bartlett was actively engaged." The result of my labors, and the manner in which they were performed, have frequently secured the highest applause from the Superintendent of the Coast Survey. In the eulogy delivered by Professor Bache, on Lieutenant McArthur, the professor says:

"The work which he accomplished will live for ever! Surrounded by circumstances the most difficult perhaps which ever tried the constancy, the judgment, the resources of any hydrographer, he vanquished circumstances. His reconnoissance of the western coast, from Monterey to Columbia river, and his preliminary surveys there, were made in spite of desertion and even mutiny—in spite of the inadequacy of means to meet the truly extraordinary circumstances of the country. Happy that in his officers he had friends devoted to him and to their duties—*especially happy in the officer next to him in the responsibilities of the work.*"

In reference to the insinuations that I had smuggled certain goods, conveyed by the Ewing, the only witnesses who speak on the subject are Lieutenants Missroon and Simms. Missroon says: "It was known to one or more members of the (naval) board that his (Bartlett's) conduct on board the surveying schooner Ewing was discreditable to him, and believed to be dishonest."

Lieutenant Simms says: "That in conversation the charge was that Lieutenant Bartlett had passed goods through the custom-house. He heard Bartlett say the clothing he had was worth $750, taken on board at Valparaiso and landed at San Francisco. Bartlett said Harrison, custom-house officer, passed them for the use of the vessel. Witness was attached to the vessel. The goods did not go on board again. This was a matter of public notoriety on shore. It was in the year 1849." Again: "Bartlett said he had seen Harrison, and had told him the goods were for the use of the vessel, and Harrison had charged nothing for passing them."

The ear of the community has been filled with rumors that it had been proved I had been guilty of smuggling. I quote all the testimony given before the committee to show on what character of foundation the rumor rests. Was it intended by Lieutenant Simms to say what a grammatical construction of his language imports? I will be lenient in my treatment of him, and suppose he did not. It is necessary, however, for my vindication, to meet the charge as it stands. To prove a negative is at all times difficult, and the law, unless in

exceptional cases, never requires it. To my own positive denial that I ever used the Ewing for the purpose of transporting goods of my own intended for sale, I am able to add the testimony afforded by the following correspondence:

WASHINGTON, *July* 18, 1855.

DEAR SIR: Reports derogatory to the character of the officer who took the cutter Ewing out to California have been circulated. It is due to this officer, now absent, if untrue, that they should be contradicted; if founded in facts, it is equally due the service that they should be known in a tangible form.

It has been stated that he traded along the western coast, in some cases smuggling the goods on shore. On addressing myself to Lieutenant J. H. Moore, he referred me to you as having been the executive officer of the Ewing at the time alluded to. Any information you may have, calculated to relieve the officer or do justice to the service, I will thank you to forward to me at your earliest convenience.

I am, dear sir, very respectfully, yours,

S. F. DUPONT.

Lieutenant A. C. RHIND, *U. S. N.*

Lieutenant A. C. Rhind to Commander S. F. Dupont.

STATEN ISLAND, *July* 22, 1855.

DEAR SIR: I have received your note of the 18th. The officer who commanded the cutter Ewing on her voyage to California, Lieutenant W. A. Bartlett, had some affairs of trade, the nature or extent of which I did not take the trouble to inform myself. It seemed to me to be rather a matter of taste.

It is not to my knowledge true that the vessel, or any person on board of her, was at any time made use of for the purposes mentioned in your note.

Respectfully, &c.,

A. C. RHIND.

Commander S. F. DUPONT.

STATEN ISLAND, *December* 18, 1855.

SIR: I have received your letter of the 12th. I continue to be perfectly satisfied with the reply I wrote to the note of Mr. Dupont. It is a fact well known that you were engaged in business in San Francisco. *So long, however, as the requirements of the service were observed, it was, in my opinion, a matter of taste.* The manner in which I stated it conveyed a reproof to those who desired to make it otherwise.

I may mention to you that I met Mr. Thornton here recently, and

that, in a conversation with him in regard to the affair, (Mr. Thornton was also one of the watch officers of the Ewing,) *he stated that he also was ignorant of any such proceedings as imputed to you, and referred to the impossibility of such occurrences taking place without his or my knowledge.* * * * * * * * * * *

Your obedient servant,

A. C. RHIND.

W. A. BARTLETT, Esq.

We have here the evidence of Lieutenant Rhind, the executive officer, as well as that of Mr. Thornton; but we have still more pertinent testimony in the evidence of the witness, Simms, himself. Only one month before he was called to testify before you, he addressed me the following letter:

WASHINGTON, *February* 4, 1856.

SIR: I have received your letter stating that you have been charged with using the schooner Ewing for the purpose of smuggling along the western coast, and asking me to give you a statement in reference to the same. In reply I would state that I was attached to the "Ewing" at the time you speak of, and have no personal knowledge of your having used her for such a purpose. I was aware of your being engaged in business in San Francisco, but know nothing personally of the charge to which you refer.

I am, sir, yours, &c.,

C. C. SIMMS.

WASHINGTON A. BARTLETT, Esq.,
Washington. D C.

I am also able to lay before you a letter from the commander of the revenue brig Lawrence:

WASHINGTON CITY, *February* 21, 1856.

DEAR SIR: Upon a perusal of your memorial to Congress, and accompanying correspondence, I was greatly astonished at learning that you are charged with having been engaged in illicit trade while employed in the survey of the coasts of California and Oregon, on board of the United States schooner Ewing.

My particular duties while in command of the revenue brig Lawrence, were the prevention and detection of smuggling and violation of the navigation laws; and to the manner in which those duties were performed my success will bear testimony.

My officers and crew were in constant communication with those of the Ewing, and it is hardly possible that such an occurrence should have taken place without having reached my ears.

It would require direct and positive testimony to convince me that a naval officer whose professional and private character is without reproach, could be induced, by pecuniary considerations, to engage in perpetrating the meanest crime upon the statutes—smuggling.

I am aware of one fact, however, to which I bear cheerful testimony,

i. e., that you did, in company with Lieutenant McArthur, wait upon James Collier, esq., collector of the customs at San Francisco, and inform him that while engaged beyond the limit of my observation, you would keep a watchful eye over the interests of the revenue, and report promptly to him any violations of those laws which might come under your observation, which was properly appreciated by the collector.

Very faithfully, yours,

ALEX. V. FRASER.

WASHINGTON A. BARTLETT.

It is very evident that this charge was before the Naval Board. How far it tended to produce the decision at which they arrived, it is, of course, impossible to say. It is certain, however, that it formed one of the grounds of my condemnation; for Lieutenant Missroon so states it. This is also shown by the letter of inquiry of Captain Dupont, above recited. The answer of Lieutenant Rhind was, however, of no service to me, *for it seems that* THE BOARD FIRST CONDEMNED ME, *and* THEN INSTITUTED AN INQUIRY *as to the truth of the charge.* I ask your serious attention to the following communication from Mr. Rhind:

STAPLETON, STATEN ISLAND, *October* 8, 1855.

SIR: The annexed notes, you will see, are copies of a communication to me from one of the Navy Board, and reply thereto. When I learned from Commander Dupont that *he* did not deem it necessary to make you aware of it, I determined to do so myself. In the course of a conversation with him on the subject, (before the decisions of the board were published,) he made the remark, "*that my note did not make any difference in your case, as they (the board) had decided it before my reply was received.*"

I have the original of the note of Mr. Dupont. You are at liberty to make what use you think proper of these notes, to instance the manner of action on the part of the members of that inquisition.

Yours, &c.,

A. C. RHIND.

Mr. W. A. BARTLETT.

P. S.—In regard to the allusion made to Lieut. Moore, in the note of Mr. Dupont, I have it from that officer, that he simply designated me as one of the officers of the "Ewing," and did not think otherwise than that I would decline to furnish information in such a manner.

It will be remarked, that all that Mr. Simms says about smuggling, "or passing goods," he gives as derived from my own conversations. It would be singular, indeed, had I been knave enough to have committed the act, I should have had the folly to expose myself to a brother officer. Facts and circumstances have been so confounded and distorted, that I will now narrate the truth of my connexion with this alleged trading transaction. While at Valparaiso, I purchased

from the United States naval agency $728 25 worth of British sample clothing, (seaman's, and especially suited for surveying service,) equal to only one suit per man. My object in doing so was to have the means within my control of supplying the crew with clothing suitable to their work, at a low price. We had learned that clothing had, with everything else, reached fabulous prices at San Francisco. The men's wages were but $12 to $18 per month, while the wages of the port were $250 to $300. These goods were shipped on board the John G. Coster, and not on board the Ewing. The freight bill and receipt are now in my possession, and a copy thereof will be found in the Appendix IV.

When they arrived at San Francisco they were regularly passed through the custom-house, as will appear by the following affidavits.

The undersigned, James W. Bingham, of the city of New York, being duly sworn, deposeth and saith, that he was a member of the firm of Bingham, Reynolds, Bartlett & Co., of San Francisco, and resident there from August, 1849, until October, 1851. That said firm received from ship John G. Coster an invoice of clothing, shipped from Valparaiso, which was sold for account of W. A. Bartlett, and proceeds paid him. Deponent has not now before him the books of said firm, which are in San Francisco, but can be produced or referred to within sixty days, if required for verification of deponent's statement. The deponent remembers the fact of receiving and making sales of goods before mentioned. That said goods were regularly entered and cleared at custom-house in San Francisco, as deponent firmly believes, and were received from said ship John G. Coster by custom-house permit, as required by law.

JAS. W. BINGHAM.

STATE OF NEW YORK,
City and county of New York, } *ss.*

On this 17th day of April, one thousand eight hundred and fifty-six, before me, a notary public, duly commissioned and sworn, personally appeared James W. Bingham, and to me known to be the subscriber to the foregoing statement, and made oath that the same is true and correct, to the best of his information and belief.

[L. S.] Witness my hand and official seal, the day and year above written.

JOHN DRAKE.

PHILADELPHIA, *April* 7, 1856.

The undersigned, formerly the U. S. collector in and for the port and district of San Francisco, Territory of California, and so acting in the year A. D. 1849, and to the month of October, 1849, when relieved by Col. J. Collier, esq., his legal successor, hereby states, for the benefit of W. A. Bartlett, esq., late of the navy, and for any use the said Bartlett may desire to make of this paper: That it was the

practice of the custom-house at San Francisco, at the period referred to, viz: 1849, to demand of the master of every merchant vessel entering the port of San Francisco, a full and complete sworn manifest of the entire cargo, whether taken on board at the commencement of the voyage, or at any port on the route, and that immediately the vessel entered the port, (and even before said manifest was due at the custom-house,) and before her hatches could be opened and any article could be landed, a sworn "visitor" and "inspector" was placed on board, and the hatches were locked or secured by custom-house seals, and that when the hatches were opened they were so opened under the charge of said sworn inspector, and that no article or package of the cargo could be landed from the ship until a regular "permit" was handed to the inspector, signed by the collector or one of his deputies, or the permit clerk, under the usual forms and guards of the office.

And the undersigned further says, that such permit, which was the only legal proof to the inspector that he had authority to land packages, would, on his receipt of it and consequent delivery of the packages enumerated upon it revert to the custom-house, as the inspector's voucher of delivery; and would there remain with and share the fate of the archieves of the custom-house.

And the undersigned further says, that while he cannot recall, from personal recollection, the circumstances of the importation of clothing, which Mr. Bartlett admits he imported into San Francisco, from Valparaiso, in 1849, in the ship John G. Coster, the undersigned does not doubt that on the receipt of an application, whether verbal or in writing, to permit the articles referred to to be landed, whether they wereto be entered for duty or free, or whether the question of duties remained to be decided, that either the undersigned or his deputy, did give, either to Mr. Bartlett or some authorized agent of his, a full permit to enter the clothing, or else such agent could not have gotten posesssion of them, either from the master of the ship or the inspector of customs. And the undersigned has no reason to suppose that Mr. Bartlett, the master of the John G. Coster, or the inspector of customs, or either of them, combined to evade the laws of the customs, in a matter of such trifling importance or in any other case; and which, in this case, must have involved the ship and cargo, in which, it is not supposed, that Mr. Bartlett had any interest.

The undersigned does not see in this transaction alluded to anything to implicate Mr. Bartlett, or to attach to him a charge of smuggling. It is evident that he applied to the proper authority to have the articles landed and placed under his control. And the question of duties or no duties was, under the circumstances of the customs in California, a question the undersigned could fully decide for himself and *the public service;* and that the undersigned did decide the matter in such manner as the circumstances called for there can be no doubt.

And the undersigned further says, that at no period during the time of his administration of the customs at San Francisco, was any charge ever laid, or attempted to be laid, before him, of any attempt, intention, or act of smuggling, on the part of Lieut. Bartlett, then commanding the United States schooner "Ewing," or subsequently to his being relieved of that command.

*And the undersig*ned declares that Lieut. Bartlett enjoyed a high

reputation in San Francisco, for honor, probity, and attention to his duties, in all his official and private relations, and that among his acquaintances, and they were extensive in that population, this officer stood high in their esteem and respect. And the undersigned knows of nothing which should discredit Lieut. Bartlett as a public officer and gentleman.

E. H. HARRISON.

STATE OF PENNSYLVANIA, }
City of Philadelphia, } *ss.*

Be it known, that on the day of the date hereof, before me, Edward Wilcox, notary public for the commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in Philadelphia, personally appeared the before named E. H. Harrison, and acknowledged the foregoing instrument of writing to be his act and deed.

[L.S.] In testimony whereof I have hereunto set my hand and affixed my notarial seal, the 7th day of April, A. D. 1856.

EDMUND WILCOX, *Notary Public.*

Such portions of this clothing as were desired by the crew were furnished to them and charged and settled with Lieut. McArthur. As no surveying service could then be performed, as before stated, and the Ewing was about to proceed to a warm climate, the residue, being at my personal risk and cost of storage, I ordered to be sold.

The two branches of this charge, first, that I used the Ewing for trading purposes, and, second, that the goods so conveyed were smuggled or improperly passed through the custom-house, are thus shown to have no warrant in the evidence in the cause, and no foundation in fact.

The fifth and last charge accuses me with fraudulently attempting to obtain from the Treasury Department a larger compensation for my services as special agent to Paris than I was entitled to. It is thus stated in the testimony of Lieut. Missroon:

"The board also were influenced by an examination of certain accounts and papers on file in the Treasury Department, recently rendered by Mr. Bartlett for his expenses in Paris, which were not admitted by the department until altered; and contain charges for items which were deemed discreditable to Mr. Bartlett as an officer."

The specifications of this charge are subsequently stated by the same witness as follows. I divide them for convenience:

1st. "That he had rendered accounts claiming more money than it was understood he should receive for that duty."

2d. "That he had admitted on the examination of his accounts virtually that the items charged embraced the expenses of his wife and children also."

3d. "That by advice he had withdrawn these charges, or accounts, but had afterwards reproduced them, and that they then appeared on file in the Treasury Department."

4th. "These accounts were found to contain exorbitant charges, and impressed the board unfavorably of his honesty."

The sub-specifications under this fourth head are as follows:

1st. "He claimed expenses for constructing *sixty-three* light-house illuminators; but he was ordered to attend to no other duty than to enter into contracts, &c., for eight illuminating apparatus, under an order dated July 16, 1852."

2d. "A charge appeared for office of agency in Paris, when no office was authorized or required; and it appeared, by another bill, that this office was the quarters of himself and family."

3d. "A charge for visiting English lights; which visits were unauthorized."

4th. "A charge for parlor in London—Fenton's bill for $34 25 for two and a half days' board, originally charged $45."

5th. "Doorkeeper and messenger for two years; servant's hire, which appeared to have been made out after his return home, which, if presented at all, should have been charged as paid; druggist's bill," &c.

The charges conclude with a general count in reference to expenses in Paris, and the maximum amount to which I was supposed to be limited.

The testimony of Mr. Jenkins upon these charges is extracted as follows:

"Bartlett came to the office early in the morning and spent the time that day till nearly 9 o'clock at night. During that day and evening he (B.) spoke almost continually of his trip to Paris, his accounts, &c., without being specific, evidently with a view to elicit from witness the opinion of the Light-house Board relative to his personal expenses, accounts on said trip, &c. Witness informed Bartlett, in as delicate a manner as possible, what he, witness, conceived to be the general opinion of the members of the Light-house Board; all of whom (except Secretary of Treasury and Professor Bache) were present at the meeting of said board when Bartlett's accounts were examined and discussed. Witness even pointed out to Bartlett certain vouchers which he thought very exceptionable. Finally, Bartlett asked him what he should do. Witness told him frankly and promptly that he ought to withdraw all of his vouchers for personal expenses. Bartlett then asked if he was to lose all his personal expenses. Witness replied, by no means; that his instructions comprised a maximum limit, and witness had no doubt that if Bartlett, as he said, could satisfy the Secretary of the Treasury that his expenses had been greater than that maximum, he would make a just and liberal allowance as possible. Bartlett then addressed a letter to the Secretary of the Treasury, and filed it in lieu of his accounts and vouchers, which he withdrew."

"The vouchers for disbursements were then properly stated and sent to the Secretary of the Treasury with Bartlett's letter submitting his claim for personal expenses, and the report of the Light-house Board thereon."

"Bartlett claimed $4,011 for personal expenses covering 27 months. The particular vouchers to which Bartlett's attention was called by witness were his bill at Fenton's hotel, London, for two and a half days' board and expenses, $45, which now appears to have been *altered* to $34 35; his vouchers for transportation of extra baggage, trip to Spurn light, loss of baggage, and for medicine. The opinion of witness was that none of these would pass the board. Witness thought the vouch-

ers submitted by Bartlett evidently included family expenses, and were consequently all objectionable. Bartlett was finally allowed three per cent. on expenditures amounting to $2,700. After withdrawing his accounts, Bartlett told witness he had restored them."

Previous to the year 1852, there arose a question of great importance to the government and the commercial interests of the country in reference to the propriety of introducing the improved French lenses in the light-house establishment of the United States.

Having taken a great interest in this matter, and acquired as much information as I could procure, at the suggestion of Professor Bache, and by the invitation of the Secretary of the Treasury, I laid my views of it before him, and the result was that I was requested to proceed to Paris as the special agent of the department to obtain full details and precise knowledge upon the subject. The board of inquiry into the light-house establishment, appointed under the act of Congress of March 3, 1851, had recommended the adoption of the system of illumination of the French lens; and the leading duty imposed upon me was to ascertain and report facts and my opinion for the guidance of the department. I was instructed that the recommendation of the board would not be adopted until I had been heard from.

I repaired to Paris in the month of July, 1852, with the written instructions of the Secretary setting forth the nature of my duties, the extent of the powers with which I was then entrusted, or eventually to be clothed, and the terms, as agreed upon, by which my proper expenses were to be reimbursed.

As a question has been made as to the scope of my authority, it will be better at once to determine that matter by reference to the instructions. The material portions are expressed in the following language:

"Congress having authorized the construction of light-houses at different points on the Pacific, the department contemplates furnishing them with the improved French lenses, provided the needful appropriation can be obtained to cover the increased expense. But previous to giving any positive orders for the purchase of them, it wishes to obtain particular and detailed information upon all points connected with the subject, and for that purpose has appointed you to proceed to Paris."

* * * * * * * * *

Then follow the details of instructions, as to the information to be obtained in regard to work, prices, improvements, necessary implements, and supplies. The instructions proceed:

"It has been suggested that the 6th order of lenses will be advantageously employed in various small lights on the coasts and harbors of the United States without making any other change except substituting them for the present reflectors.

"You will please ascertain on what terms this order of lenses can be procured with a suitable mechanical or other lamp, without other fixtures or accessories of any kind, or if you find, on inquiry, if the latter would be absolutely necessary in order to make the suggested change, then to include the cost of them also, but to have nothing of the kind that is not absolutely necessary.

"The department, after hearing from you as regards the smaller

sized lenses, and obtaining further information in connexion with the subject of this *size*, may probably try the experiment with six or eight of the smaller light-houses, and if it succeeds, extend to a much larger number."

* * * * * * * * *

These extracts sufficiently exhibit the extent and character of the powers and duties which I assumed.

The mode in which my expenses were to be reimbursed is expressed in the following clause of my instructions:

"As an officer of the government, you of course are aware that the department is prohibited by law from making you any compensation for the service you may render in this business, and can only pay for your passage to and from Europe, and the customary travelling expenses to Paris, and your personal expenses while there, with the understanding, as agreed with you, that they are not to exceed three per cent. on the expenditures that you may make for the purchase of the different lighting apparatus."*

I was further directed to execute the customary bond required from all disbursing officers, which, previous to sailing, I did, together with Messrs. Wm. H. Aspinwall, Henry Grinnel, and Drake Mills, as my sureties.

At the time the stipulation as to the maximum amount of expenses was agreed to, it was distinctly understood that the probable period of my absence would not exceed eight or ten months.

This will be shown by the statement of the Hon. W. L. Hodge, late Assistant Secretary of the Treasury:

WASHINGTON, *April* 28, 1856.

DEAR SIR: In answer to your note requesting me to state what was my opinion or impression whilst I was Assistant Secretary of the Treasury, at the time you were appointed by the department to procure the French lens at Paris, as to the probable time it would require for you to perform the assigned duty, I reply that I do not think I had any precise opinion or impression on the subject; but I certainly did not think it would exceed twelve months, particularly under the then existing views of the department as to the extent of their order for those lenses.

Very respectfully, your obedient servant,

WM. L. HODGE.

W. A. BARTLETT, Esq.

My labors and success in the discharge of this mission will be fully attested by the voluminous reports and correspondence with the department.

Upon my return to the United States, I presented my accounts and vouchers for disbursements and personal expenses to the Secretary of the Treasury, by whom they were referred to the Light-house Board for preliminary investigation. There was no difficulty or question of any kind in regard to the charges and credits for disbursements; but it was indicated as the opinion of the Light-house Board, that I ought to limit my claim for personal expenses to the amount of commissions

* For the whole of these instructions see Appendix V.

upon actual disbursements, and make my charge in that form. I acceeded to this suggestion, notwithstanding its flagrant injustice, and the claim is so stated in the account and report of the Light-house Board.

It was well understood that my actual personal expenses far exceeded the amount at any time claimed. It is distinctly stated in the account and report of the said board, as a claim for "*partial* reimbursement" of my "*actual expenses.*" I had made no charge whatever for a variety of expenses necessarily incidental to my position and services, as I was desirous of avoiding any question with the accounting officers. This feeling induced me to accede to the suggestion of the Light-house Board, or rather its secretary. I therefore suffered my claims to be stated in the form of the stipulated per centage, although I had already presented it in the shape of "expenses."

The Secretary of the Treasury, however, subsequently decided that this was not the proper mode of stating the account, and accordingly I reverted to my original claim for expenses.

The claim and the general grounds stated in support of it, as first presented, will appear from a copy of my first communication.

NATIONAL HOTEL, *Washington, September* 28, 1854.

SIR: Having completed the service with which I was charged by the Treasury Department, under my appointment and instructions of the 16th June, 1852, and subsequently as special disbursing agent and superintendent of construction of lens lights at Paris, I have the honor to submit my accounts of disbursements for material, contingent and personal expenses, for your approval and settlement.

In addition to the eight California and Oregon coast lights for which I contracted, constructed and paid for at Paris, under my instructions from your department, I have superintended the construction and approved the bills of fifty-five Fresnel illuminators, and their accessories, for the Light-house Board, and of which I shall have the honor to speak in my detailed report.

In the statement of my account, I have separated the "*contingent*" expenses of my office at Paris from the items properly chargeable as "*personal*" expenses, and cannot but hope that the Hon. Secretary of the Treasury will carefully examine, and, if proper, approve my accounts, before submitting them to the auditors.

The balance due to me is stated on my account current at $471 61, but before my account shall be finally closed and the balance struck, I shall desire to present two other personal vouchers for small amounts, which I find I have accidentally omitted to bring from New York; they will not, however, make any material change in the figures.

I shall have the honor in a few days to present to the department a full report of my proceedings, under the various instructions which I have received from time to time.

All of which is most respectfully submitted.

I have the honor to be your obedient servant,

WASHINGTON A. BARTLETT,
Special Disbursing Agent of the U. S. Treasury.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

On the same day—that long day spent in endeavoring "to elicit the opinion of the Light-house Board"—this further letter was addressed to the Secretary.

WASHINGTON, *September* 28, 1854.

SIR: In submitting the accounts embraced in my communication of this date for your consideration and settlement by the department, I take leave respectfully to say that, while I hold myself ready at all times to present my bills of expenses *actually* incurred while absent in Europe for the *special* duty with which I was charged by the Treasury Department,—and to show by them that the *aggregate* amount of those expenses have greatly exceeded the maximum rate which your honorable predecessor stated would be allowed for expenses—(arising from the length of time to which the service has extended so much exceeding the original calculations of the department)—on the amounts which I should be called upon to disburse, and which I have disbursed on the contracts made by me at Paris, and approved by the department; and inasmuch as from the very nature of the case it is almost impossible to separate the necessary official expenses, which may be properly charged as "personal" expenses within the meaning of my letter of appointment, from those which are yet more "private," and in order to prevent and avoid those difficulties which might arise in so separating and determining what items or bills of expenses incurred by me should be considered admissible, I would respectfully submit to your consideration that in the settlement of my accounts for disbursements made by me in Europe, I shall be allowed the maximum amount which is stated in my letter of appointment of the 16th June, 1852, as the amount which the department would finally credit in my accounts as expenses of disbursement and superintendence of the construction of the California and Oregon light-house illuminators. This allowance or credit to be in addition to my actual *travelling* expenses *to* and *from* Paris, as is usually allowed to officers of the government when travelling under "orders."

The department will please bear in mind, that in addition to the duties of special disbursing agent of the department in Europe, and completing the work of the California and Oregon lights, (for sums considerably less than the amounts estimated for and approved by the department,) I have during the twenty-seven months of my residence at Paris, under the orders of the department, also superintended the construction and shipment of fifty-five other Fresnel illuminators and their accessories for the Light-house Board, for which service *no expenses whatever* have been charged, asked for, or allowed, in any department of the government.

I have the honor to be, sir, very respectfully, your obedient servant,

WASHINGTON A. BARTLETT,
Special Disbursing Agent.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

Finding, upon an interview with the Secretary of the Treasury, that he disagreed with the Light-house Board as to the principle upon which the account was stated, I addressed to him this communication:

NATIONAL HOTEL, *Washington, December* 1, 1855.

SIR: I have the honor, in conformity with your verbal instructions, herewith to submit for your inspection, and, I humbly trust, your approval, the vouchers which exhibit the amount of my expenses while executing the orders of the department in the construction of the California and Oregon lights at Paris; together with such certificates and remarks thereon as will the better enable the department to estimate the expenses which a government agent must pay from his own resources, unless the department shall reimburse him for those expenses.

And I have the honor, now again, to submit for the consideration of the department, that although I used every diligence (as the files of the department show) to complete all the work confided to my superintendence, in the shortest possible time, yet the time required proved to be more than *double* that first contemplated as necessary when my original instructions were penned by the department; and in consequence my expenses were increased *pro rata*, and have *from that cause alone*, as per vouchers, considerably exceeded the limit which was supposed would be sufficient to enable me to attend to the duty, without personal loss, but which excess, in my most conscientious judgment, should not be withheld from me. And I pray the honorable Secretary, in this connexion, to have in mind the fact, so unusual in contracts made with the government or its agents, that on the completion of the work, the accounts show that I made a clear saving of $2,452 on the estimates which the department approved, both on the *contracts* and *requisitions* for money to pay them, a sum of itself equal to more than two-thirds of my expenses for twenty-six months of foreign agency; likewise to have in view the fact that I superintended, inspected, and shipped to the United States, for the Light-house Board, (which is not less a part of the Treasury Department,) *fifty-five* illuminators for the Atlantic coast, (including Hatteras, &c.,) and costing over 800,000 francs, for which no expenses of agency or superintendency have been incurred in any quarter, and certainly not claimed by me.

With the highest consideration of respect, I have the honor to be your obedient servant,

WASHINGTON A. BARTLETT,
Special Agent.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Register's Office, February 8, 1856.

The foregoing is a true copy of an original letter now on file in this office.

F. BIGGER, *Register.*

The following is the account referred to in this communication:

Abstract of vouchers certified to and presented by W. A. Bartlett, special disbursing agent and superintendent of construction of the California and Oregon Fresnel lenses for the lights of those coasts, as proof that [of] his expenses during the twenty-six months of this service in France, and sustaining the statement set forth in his letter to the honorable Secretary of the Treasury of the (1st December,) for the settlement of his accounts and expenses.

Title of voucher.	To whom paid.	Francs.	Remarks—Why and for what paid.
A.....	Delauny.....	7,200 00	Rent of small apartment, and rate very moderate.
B.....	Rondill.....	100 00	Fuel—equal to thirty-six francs per month, or three-quarters of a ton per month, for all purposes.
C.....	Brasquieis.....	837 50	
D.....	Raynal.....	141 00	Being six francs per month for water, (4 cents per day.)
E.....	Bigelow.....	170 00	Surgeon's services—injury to knee.
F.....	Duche.....	344 20	Oil and candles—$2 75 per month, (9 cents per day.)
G.....	Bellayer.....	297 90	Hotel and other expenses incident to leaving Paris.
H.....	Descamps.....	1,200 00	Fifty francs per month to my porter, messenger, or personal attendant.
I.....	Veron.....	470 00	Rent of apartment *first* month in Paris.
K.....	Chapman.....	367 00	Expenses in England when returning to the United States.
L.....	W. A. Bartlett.....	5,700 00	Daily expenses—see explanation on bill.
M.....	Cochoi.....	235 00	Waxing floors—$2 per month, (done twice a week.)
N.....	Hogg.....	158 90	Medicines—*own* use only.
O.....	W. A. Bartlett.....	593 75	Various personal expenses—see bills, in England.
P.....	John Munroe & Co.....	45 50	Sending baggage to Liverpool *via* Havre.
Q.....	W. A. Bartlett.....	199 50	Expenses in France when going to Havre to ship the lights; three visits.
		18,061 05	

And I hereby certify, on honor, that the above statement of my expenses is correct in all its details, and that it is but just and proper that I should be reimbursed to its whole amount, knowing that I have not only expended all my pay, but also all the money which Congress voted for extra pay while on service in California—a necessary consequence of the length of time that has been required to complete the work, and considering also that I have superintended the construction of fifty-five lenses, and some lanterns for the Atlantic coast in the meantime.

Respectfully submitted,

WASH'N A. BARTLETT, *Special Agent.*

NOTE.—The honorable Secretary of the Treasury will also please note the fact that my *contracts* and *estimates* were *approved*, and *requisitions* based thereon for the sum of 422,275 francs to construct six sea lights of California and Oregon,* but that they (illuminators and lanterns) have only cost, under my superintendence, the sum of 410,118 francs, being a clear saving of 12,160 francs on the contracts and estimates as approved by the department, or $2,423.

Respectfully,

WASH'N A. BARTLETT,
Special Superintendent and Disbursing Agent at Paris.

TREASURY DEPARTMENT, REGISTER'S OFFICE, *February* 8, 1856.
F. EIGGER, *Register.*

The foregoing is a true copy of the original, now on file in this office.

W. A. B.

* Subsequent to the contracts for Fort Point and Alcatraz Island lights.

This "abstract," with the vouchers as enumerated, was then referred to the First Auditor by the Hon. Secretary of the Treasury, with the following endorsement upon it:

"Referred to First Auditor with authority to allow three per cent. on the disbursements for lights in California and Oregon, in full satisfaction of the account.

"JAMES GUTHRIE.

"DECEMBER 4."

The account being then stated by the "Auditor," as directed by this endorsement, I again (December 22) addressed the Hon. Secretary that this left a large balance unprovided for, whereupon he reviewed his order of December 4. But it was charged against me before the Navy Board, as Lieutenant Missroon states, as a disreputable and dishonest act, that I "had withdrawn these charges and accounts, but had afterwards reproduced them." If so, all I have to answer is, that the Secretary of the Treasury is "particeps criminis," as will again appear by his order to the commissioner of customs, as follows:

TREASURY DEPARTMENT, *January* 3, 1855.

SIR: I have read the enclosed communication from Mr. Bartlett, upon the subject of his claim for expenses to and from Paris, and whilst there.

Mr. Bartlett being an officer of the government, and appointed to go to Paris, was promised, as his letter of appointment shows, his expenses in going and returning, and whilst there, not to exceed the sum of three per cent. on the amount disbursed, as expressed in the letter of appointment. The account, being stated on the principle of allowing three per cent. on the amount disbursed, is not properly stated. It should be stated by allowing the expense in strict compliance with the letter of appointment, not to exceed three per cent. This will require a restatement of the account, and when his vouchers are not sufficient, you will apprise him, and allow him time to make them right.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

H. J. ANDERSON, Esq.,
Commissioner of Customs.

—

TREASURY DEPARTMENT,
Register's Office, April 21, 1856.

The foregoing is a true copy of the original on file in this office.

F. BIGGER, *Register.*

It is proper distinctly to state the ground which I assumed in reference to my allowance of expenses. This will appear, consistently, from every communication I submitted to the department.

I had confessedly expended more than, under the circumstances, could ask to have reimbursed. My expenses had far exceeded the maximum amount of commissions upon actual disbursements. This resulted from the unanticipated prolongation of my residence in Paris, growing out of the tardiness of action of the Treasury Department, as to certain orders, as exhibited by the correspondence, the inevitable delay upon the part of the contractors, and the large increase of apparatus subsequently determined upon.

In looking at the clause of my instructions relating to my expenses, I saw that its grammatical construction referred the maximum per centage to the personal expenses as contra-distinguished from the specific payment of passage money and cost of travel. I was advised that this was a fair construction of its legal import, and that if an agreement with the government be subject to two constructions, the courts have determined that that construction should be adopted most favorable to the officer. But whatever were my legal rights, I knew that the equity of my claim required a liberal interpretation of the contract. Its understood conditions had been varied by the department. I had remained much longer abroad, and had rendered far greater and more valuable services than had originally been contemplated. Except for the change effected by the act of Congress in the establishment of the Light-house Board, and the mode in which the payments were made, I should have been equally entitled to three per cent. upon the expenditures for the *fifty-five* additional illuminators. I had much more trouble as to those than as to the original *eight*. I was under far greater responsibility, as I alone inspected, tested, and certified the work. The apparatus under the first contracts was tested by the superintending engineer of the French administration, as well as myself. But I never claimed anything for these services. I referred to them as offering strong *equitable* considerations for a fair reimbursement of my actual expenses, and I based my claim upon this equitable view. I had, in fact, disbursed the sum of $9,378 38, for the "Sand Key apparatus," afterwards Hatteras light, for which I have never been allowed any per centage, although the amount was formally charged against me, under my bond, in the Treasury Department.

By my account, heretofore presented, it will be seen that I claimed for my personal disbursements - -	$4,011 00
Upon the auditing of this account, with the vouchers to sustain the several items of charge, there was allowed the sum as properly charged and vouched - -	3,752 18
So that the whole amount disallowed or suspended by the department as unnecessary expenses was but - -	258 80
As, however, it was decided that my maximum allowance could not exceed three per cent. on the "expenditure" of $90,413 90, I have been paid only the sum of -	2,712 42

It will be perceived by the terms of my letter of instructions, which has been referred to as the agreement by which my compensation was determined, no specific number of apparatus is mentioned. It was, however, understood, at that time, that I should be called on to su-

perintend those only which were necessary for the Pacific coast, and this, it was presumed, could be accomplished in about twelve months. Having in view, therefore, the time to be occupied, and the probable amount of the expenditure, the amount of three per cent. on that amount, was regarded as a fair equivalent for my personal expenses for one year. Had I remained abroad but the period contemplated, which period was the basis of the agreement for compensation, this amount would have exceeded the expenses, and could not have been claimed. But instead of superintending alone the lenses for the Pacific coast, I was subsequently required to superintend the construction of fifty-five illuminators for the Atlantic; and instead of remaining one year in Paris, as was contemplated by the agreement, I was detained there upwards of twenty-six months. Now it is evident that the compensation was based, not on skill in the discharge of my functions, but solely on the time to be applied. The compensation was for expenses; and these were in exact proportion to the time employed. If the contract had, in express terms, stated that I was to remain in Paris for twelve months, and for the expenses of that period I was to be allowed the sum of $2,000, and subsequently I had been required to remain twelve months longer, without any express stipulation as to the compensation, is there any doubt that the law would have raised an implied contract on the part of my employer, to pay me a sum for the additional period equal to that for my original employment? Testing my case by this admitted principle of law, my compensation would far exceed the whole amount originally claimed by me. It is said, however, that the letter of instructions limits the allowance to a per centage on the "expenditures" made by me, and as the "expenditures" for the fifty-five illuminators were not made by me, I have no right to any remuneration for my extra time and extra expenses. Admitting the technical force of the word "expenditures" to be as is contended for, the conclusion by no means follows: the most that could be urged would be a deduction from my extra remuneration of such sum as would be equitably regarded as the equivalent for the trouble and responsibility in receiving and paying out the money; but the fact would still stand boldly out, that, by orders of the department, I had incurred greater expenses than had been contemplated by the parties when the agreement was entered into. This proposition seems to me so plain, that any thing but its mere statement would only seem to confuse it.

But admitting that my remuneration was limited to the technical rule of "expenditures," it will be remembered that I have heretofore shown that, in addition to the "expenditures" for the Pacific of $90,413 90, I also expended for Hatteras light $9,378 38. By this technical rule, therefore, I am entitled to a further allowance, equal to three per cent., on this sum, ($281 34,) which has not been paid me.

On a full review of all the circumstances, whether you regard the mere legal or equitable interpretation of the letter of instructions, the whole amount of my expenses, so far as they are properly vouched, and are within the legitimate expenses of such a mission, should be paid to me. So confident am I of the legality as well as justness of

this demand, that I shall seek an early opportunity to submit it to the judgment of the proper judicial tribunal. Upon the subject of these accounts you have examined Mr. Anderson, the commissioner of customs, by whom my account was allowed. There is not one word in his testimony which, in the slightest degree, affects my integrity. If there be, let it be pointed out. I now submit the testimony of the First Auditor, by whom this account was examined and adjusted.

WASHINGTON, *April* 21, 1856.

SIR: I am in possession of your letter of the 18th inst., requesting me to furnish you copies of all the reports made by me in the settlement of your accounts as the special agent of the Treasury Department, for the purchase of light-house apparatus, &c., during the years 1852, '53, '54 and '55.

The reports made by me in the settlement of your accounts are on file in the office of the Register of the Treasury, which is the appropriate office to obtain copies.

You also ask, if I will state whether there is anything in the accounts rendered by you, or in the correspondence relating thereto, calculated to impugn your personal or official honor; and whether your accounts were not rendered in a full and business-like manner.

In the settlement of your accounts, there was not anything that, in the slightest degree, tended to impugn your personal or official honor.

Your accounts were rendered in a full and business-like manner.

Respectfully, your obedient servant,

T. L. SMITH.*

WASHINGTON A. BARTLETT, Esq.

The sum of $258 80 which was disallowed, consisted, principally, as shown by the evidence of Mr. Anderson, of an item for "parlor, at Fenton's hotel, not deemed necessary." Also the item for "transportation of extra baggage, medical attendance, and medicines." The charge for "extra baggage," is, as every transatlantic traveller knows, necessarily incident even to a single "American trunk," of ordinary size. The item for "recovering lost baggage," also disallowed, was the actual expense of recovering the trunk, accidentally lost, which *contained all my vouchers for disbursements.*

I have stated the objectionable items, that it might be clearly seen they were of such a character, whether admitted or not, as to reflect no discredit in incurring them.

Had the several witnesses examined against me contented themselves with the statement of such facts, if any, as were within their personal knowledge, my reply and defence would have been strictly confined to comments upon such facts, and the introduction of such testimony as was merely defensive. But it cannot escape the most superficial investigation that the spirit which characterises the witnesses before the committee, with the single exception of Mr. Anderson, the commissioner of customs, is anything but that which should accompany an investigation of a judicial, or quasi-judicial nature.

* For final statement of First Auditor see Appendix VII.

This is, perhaps, natural and inevitable. The witnesses are all directly interested in the questions at issue, and the collateral matters dependent upon their decision. They were parties, active and irritated, in regard to the transactions in reference to which they express their opinions. It, therefore, becomes material to me to show that the spirit which I deprecate, has, in fact, colored their opinions and inferences. This will be evident from the manner in which they express themselves; and this peculiarity has been already, in part, exhibited. It will be found that inconclusive matters, and the most trifling circumstances have been colored with the darkest tints, for the obvious purpose of making that appear criminal or discreditable which, unvarnished, would appear altogether consistent with strict propriety.

As illustrative of this disposition, Purser Watmough unhesitatingly declares his "*impressions*" as to my *intentions*—undertakes to express, not merely his own belief, but the "*opinion* of the mess"*—is entirely oblivious as to all facts in my favor—says, with a marvelous latitude of expression, that, "don't think he (I) had any standing as an officer;" "don't think he (I) had a friend." Fortunately for me and my cause, I have friends, warm, active, and unflinching, among the most distinguished men of the country, in and out of the service.

Mr. Pendleton G. Watmough echoes this sentiment; complacently declares that I had no standing either with officers or men of the service, and that he considered it an "act of kindness" to shake hands with me, but "was afraid that I would take advantage of it." As to Lieut. Jenkins, a complete transformation appears to have been effected in his opinions. I have from this individual numerous communications, both official and private, up to the time of the settlement of my accounts, bearing the strongest internal evidence of confidence and appreciation. But since I have been branded with an official stigma, this personage follows in the lead of his superiors. He tells you that I spent a long day, from "early in the morning" until "nearly nine o'clock at night," in the not wholly fruitless diplomacy of endeavoring to elicit an opinion—which he condescended to convey "in as delicate a manner as possible"—but what it was he does not declare.

It may be proper to remark, although of little importance except as a test of the accuracy of Mr. Jenkins' statement, that he places the long day spent, as he alleges, in eliciting his opinion, sometime in the month of November. He says it was shortly after my reply to his letter bearing date, November 7, '54. He further declares, that after his "delicate" information of what he "*conceived* to be the general opinion of the members of the Light-house Board," "Bartlett *then* addressed a letter to the Secretary of the Treasury, and filed it in lieu of his accounts and vouchers *which he withdrew.*"

My vouchers were never "*withdrawn;*" they were continuously in the treasury, or before the Light-house Board, unless they were "withdrawn" when tampered with by Mr. Thornton A. Jenkins—as is visibly exhibited by marks and annotations in his handwriting, curiously illustrating his purpose and spirit.

* As to the opinion of another, in addition to Captain Watson, see letter of Lieut. J. W Revere, in Appendix VI, (received while in press.)

The date of the *long day* is distinctly fixed by what Jenkins declares to have been its result, namely, the letter changing the character of the claim from *expenses* to *per centage*. That letter bears date *September* 28.

But the most marked expression of malignity in this witness, is that in which he evidently attempts to attach discredit and culpability to an act which is fortunately shown by another witness in its true light. He states that he pointed out as exceptionable the bill at Fenton's hotel, London, for $45, and adds, "which now appears to have been altered to $34 35."*

Both the language and the mode in which this remark is brought in indicate very distinctly its temper. Mr. Anderson subsequently explained the fact, and thus prematurely exploded the insinuation. "The charge of Lieutenant Bartlett at Fenton's hotel, London, was *reduced by my direction*, there being a charge for parlor, not deemed necessary, and the alteration in the voucher was probably made in consequence of that decision, as I think it was made known to him on the first presentation of his accounts."

As to the proportional charge for parlor, which was disallowed, I have but to remark that the policy of the accounting department of the government, which seems to require that its agents should receive those with whom their duty requires them to communicate—sometimes high official persons—in their bedchamber, or the coffee-room of an English hotel, is, at least, of questionable propriety.

Lieutenant Missroon, instead of confining himself to a statement of the particular items of my accounts which were considered by the Naval Board as objectionable, and a reference to these, and other written matters, which, legally, must speak for themselves, not only undertakes to characterize my charges and vouchers in a manner which is directly contradicted by the papers themselves, but also grossly misinterprets my instructions, mistakes the scope of my authority, and attributes to me acts and declarations which the very documents he refers to directly disprove. Had he exhibited ignorance in regard to these matters, his errors might, in a charitable view, have been regarded as involuntary; but his testimony shows that he had diligently examined the voluminous matters on file in the treasury, and I have no choice but to point out and designate what certainly appear to be wilful perversions, or equally culpable inattention to matters of unquestionable fact.

I have already had occasion to indicate some discrepancies and contradictions which appear by comparison of the testimony of the witnesses. Those which appear from a contrast with documentary evidence are still more glaring. The record of the committee shows this witness to have said: "He (Bartlett) *claimed expenses for constructing* SIXTY-THREE *light-house illuminators*, but he was ordered to attend to no other duty than to enter into contracts for *eight* illuminating appara-

* I have fortunately preserved this bill or sub-voucher. It exhibits distinctly, by its items and amount, how carefully and scrupulously I descriminated between my own personal expenses, and the much larger outlay for my family. Appendix VIII.

tus." I have already referred at length to my instructions,* which show this to be untrue. My official letters already exhibited declare: "I have during the twenty-seven months of my residence at Paris, under the orders of the department, also superintended the construction and shipment of fifty-five other French illuminators, and their accessories for the Light-house Board, for which services NO EXPENSES WHATEVER *have been charged, asked for, or allowed* in any department of the government." Again: I requested the Secretary "to have in view the fact that I superintended, inspected and shipped to the United States for the Light-house Board (which is not less a part of the Treasury Department) *fifty-five* illuminators for the Atlantic coast, (including Hatteras, &c.,) and costing over 800,000 francs, for which *no expenses of agency or superintendency have been incurred in any quarter, and* CERTAINLY NOT CLAIMED BY ME."

Lieutenant Missroon further declares: "These accounts were found to contain exorbitant charges, and impressed the board unfavorably of his honesty." The specifications under this charge are the expenses "for constructing sixty-three light-house illuminators;" for "visiting English lights;" for "parlor in London;" "office of agency in Paris;" "doorkeeper and messenger for two years;" "druggist's bill," &c. I challenge the designation of a single item which is liable to the application of this favorite term of reprobation—exorbitant.

Again, when Lieutenant Missroon is asked to state the grounds on which the Naval Board decided my case, he states, among others, that it "*appeared by official papers on file*" that "certain matters of notoriety in regard to the conduct of Mr. Bartlett on board the Portsmouth, especially, were founded in fact." The importance of this allegation will readily be perceived. Of course the Navy Department was referred to; and no doubt it would at least partially justify the board if they acted upon information which was of a sufficiently serious nature to be filed with that department. Now, as to the truth of this allegation. As soon as I was informed of the statement, never having had cause to believe that, during the whole course of my long service, any charges or complaints had ever been lodged with the department, I addressed this emphatic note of inquiry to the Secretary of the Navy:

WASHINGTON, *April* 1, 1856.

SIR: It has been charged before the Naval Committee of the Senate that the Naval Board, in my case, acted in part upon "official papers on file." Will you be good enough, without delay, to furnish me with any charges, of whatever nature, that may be found in your department against me.

WAS'N A. BARTLETT.

HON. J. C. DOBBIN, *Secretary of the Navy.*

* In the Appendix IX, X, XI, XII, XIII, XIV, will be found official communications showing the extent and variety (in part) of my duties and the appreciation of the manner in which they were discharged.

To which this answer was received:

NAVY DEPARTMENT, *April* 7, 1856.

SIR: Your communication of the 1st instant has been received. You say that it has been charged before the Naval Committee of the Senate that the Naval Board, in your case, acted in part upon official papers on file; and you ask to be furnished with any charges, of whatever nature, that may be found in the department against you.

I am not aware of any charges to which reference was made, unless it be those which originated on board the Portsmouth in the Pacific. At the request of the Naval Committee, that entire correspondence was procured from the then commander of the Portsmouth and submitted to them.

The search (which there has been time to make) of the records, since receiving your communication, has not developed any other charges against you on the files of this department.

I am, respectfully, your obedient servant,

J. C. DOBBIN.

WASHINGTON A. BARTLETT, Esq.,
Washington, D. C.

The answer is not so emphatic as the enquiry, nor so pointed, as (with due respect to the head of the department) I think I was entitled to; but it is sufficient for my purpose, for it distinctly proves the allegation that the board acted on "official papers on file," to be untrue.

But Lieutenants Jenkins and Missroon—whose complicity I shall presently prove by themselves—with that malevolence which jaundiced all their views, have attempted to insinuate that my objectionable charges comprised *family expenditures*. Jenkins thought they "evidently included family expenses." Missroon declares that "he" (Bartlett) "had admitted, on the examination of his accounts, *virtually*, that the items charged embraced the expenses of his wife and children also."

Now I desire to be understood as contradicting both the assertion of the one and the opinion of the other, in the plainest terms which good Saxon English can supply.

It will be seen that Lieutenant Missroon states, in his testimony, that "It was known to several members of the board (naval) who were attached to the light-house service," that, among other things, I made the *virtual* admission above denied; and that "*by advice* I had withdrawn the charges," &c. *How* was it known to these members? Messrs. Shubrick and Dupont are the only gentlemen who were alike members of both boards. With neither of them did I ever hold communication upon the subject of my accounts, unless mere casual conversations. I was never before the Light-house Board personally, nor was I ever present at any examination of my accounts, except with the secretary, Jenkins. The opinion expressed by him, coincident with Missroon's allegation of what was "known to several members," the connexion of it with the "advice" under which I had "withdrawn the charges," *together with the marks I have but recently*

discovered upon certain of the original vouchers, show distinctly and unmistakably that Mr. Jenkins was the individual who brought the matter before the Navy Board. He was the INFORMER; and the position he assumed may be aptly illustrated by a quotation from a distinguished writer upon penal law. "Private informers," says Eden, "are the proper instruments only of despotic governments; every idea of liberty and security is lost when the ends of justice are suffered to be sought by such means." And this information was given in the *secret* sessions of the Light-house Board, at which I was not permitted to be present.

While in Paris, I lived in the most economical manner consistent with my duties and my position. My accommodations comprised a drawing room, a chamber with an alcove, (in which my children slept,) a dining room, (which was also my office,) and a kitchen. This is no more than I should have required if I had been without my family, It seems to be considered that I should have restricted myself to one room. I submit that I was fairly entitled to a little more "elbow room." I was furnished by the Light-house Board and other departments with letters to distinguished savans—was I to receive them, in pauper fashion, in my chamber? Was I to keep my office "in my hat," and upon it draw up my reports, and execute those drawings and plans which the Light-house Board received with such marked approbation? But the Navy Board, as it appears from Lieutenant Missroon's testimony, not only consider the charges for office rent and servants' wages as unauthorized and improper, but also as *dishonest*. In their eagerness to convict me, they have entirely overlooked the fact, that the First Auditor and Commissioner of the Customs *have both approved of these very charges*.

This carping about small matters will, I feel confident, serve but to show that there is no serious charge upon which these gentlemen hope to convict me.

Of the same character, but liable to severer strictures, is the allegation—obviously originating with Jenkins, and repeated by Missroon—that I had charged the expenses of a "trip to Spurn light;" which visit Lieutenant Missroon says was *unauthorized*, and declares that the claim was one of the grounds of my condemnation by the Navy Board. The "careful examination" had by all of them, as to this matter, will appear from the simple fact, that I never made any trip to Spurn light, and never made any such demand.

I was especially charged with procuring all useful and available information in regard to the contemplated renovation of the light-house establishment. My instructions directed me "particularly to ascertain and report on the subject of any recent improvements in the manufacture of lenses." On my arrival in London, I found that the famous "Spurn light" had been just set up at the contractors, Messrs. Wilkins & Co., *in that city*, for the purpose of being tested. I therefore remained in London to examine that apparatus, which was said to combine all the recent improvements; and I ascertained, from the Trinity brethren, a matter very important to be known to the government, namely, that the English administration was dependent upon French workmanship for the lenses.

These facts distinctly appear upon my first report to the Treasury Department, dated August 5, 1852, and my accounts and vouchers show that the expense charged was for detention in London, not for an *unauthorized "trip to Spurn light."*

Again: Lieutenant Jenkins seems to insinuate, and Lieutenant Missroon distinctly declares, that "he was ordered to no other duty than to enter into contracts for eight illuminating apparatus," &c. I have, heretofore, fully exhibited the extent of my powers and duties, as expressed in the original letter of instructions from the Treasury Department. In order to leave no room for doubt or quibble, and, further, to test both the spirit and the accuracy of these witnesses, I extract from a communication from the Light-house Board, by the secretary, Mr. Jenkins, the following explicit evidence upon this subject. The date is March 14, 1853:

"Messrs. Saulter & Co. have been informed, as well as Mr. Lepaute, that *you will have the direction, examination, and test of all these articles so long as you remain in Paris*, after which steps will be taken to obtain a proper person to attend to setting up and examining such as may be ordered. If these orders can be filled at an early day, another will follow immediately."

I also give, in the Appendix, other communications from the Light-house Board, already referred to, for the purpose of exhibiting the extent and variety of my duties.

I could multiply testimony upon this subject, almost without limit. Had I received no previous orders, the subsequent reception by the Light-house Board, and the Treasury Department, of the work and materials for the fifty-five additional illuminators, would have been an ample recognition of my authority, as well as all its implied incidents.

Lieutenant Missroon concludes his testimony with the declaration that "it is not considered honorable in the navy for an officer to present accounts which he cannot adhere to."

The significance of this is not very apparent. It would certainly be dishonorable to present a claim which the party did not himself consider just, and which he would not be willing, under all circumstances, so to maintain. But if an officer presents a claim which, by the practice or regulation of a department, or the provisions of a law, is determined to be inadmissible, the fact that he "cannot adhere" to the obtaining of his allowance, is surely no evidence of its dishonesty. In good faith, and with the most perfect conviction of the right, I do now "*adhere*" to the amount of my claim as presented; whether I shall be successful in maintaining my right is wholly immaterial.

If Lieutenant Missroon intends to say that the disallowance of one or more items in an officer's account is discreditable to him, or affects him with the imputation of dishonesty, he proclaims a doctrine which, if authoritative, would certainly astonish the country. The honor and honesty which are acknowledged in the naval service, are presumed to be the same as are applicable to other branches of public employment. If, therefore, this sublimated notion of the Lieutenant is true, as to the navy, it holds good universally; and if so, not only

would the lantern of Diogenes be insufficient to discover an honest man, but all the Fresnel lenses ever constructed would fail, in illuminating power, for that purpose.

Having reviewed, I trust, satisfactorily, the evidence produced against me, so far as it was legitimately connected with the facts charged, I cannot take any further notice of the mere opinions of the witnesses as to my professional or personal character, than to say, that, as long as they confine themselves to their own impressions or belief, I have nothing to object. I have no right to deny that they entertain them. But when they undertake to make an impression that these opinions are generally or universally entertained by naval officers, my reply is that they deliberately falsify the truth. Placed, now, on a trial of opinion, to what quarter should an officer turn for support? The answer is in every breast, to those officers under whom you have served, and who possessed the best means of obtaining a knowledge of your character. To this high source of information I have confidently appealed, and the appeal has not been in vain. If anything can console me for the unjust condemnation which has stricken me, in the prime of life, from the service of my country, it is the evidence of fraternal good will which has poured in upon me from so many of my brother officers. In the brief time allowed to me, I have obtained the following testimonials:

Testimonial of Commodore E. A. F. Lavallette on the services of Lieutenant Bartlett in the Pacific Squadron.

PHILADELPHIA, *January* 23, 1856.

DEAR SIR: I received your letter of the 22d instant, in which you state, that "while absent from the country, serving as first lieutenant of the flag-ship of the African squadron, it has pleased the late 'Navy Board' to present my name to the President to be stricken from the rolls as lieutenant in the navy.

"I had the honor to serve under your command a sa midshipman, and again as a lieutenant, commanding the armed prize brig Argo in the Gulf of California, and in the attack on Guaymas, and its occupation. On that occasion you did me the honor to assign me the most advanced post, on the night previous to the attack, out of supporting distance of the guns of the squadron, and out of sight, being covered by the island which separated me from the squadron.

"How did I bear myself on that occasion? Did I meet your expectations or not?

"From your knowledge of me, my abilities and acquirements, was, or was I not, an efficient officer of the Pacific squadron during the Mexican war?"

In answer, I have to state, that your foregoing statements of our operations in the Gulf of California are correct in every particular. Your conduct on that occasion not only met my approbation, by the activity, energy, and skill, which you displayed in getting your gun landed, merited—and the effect which it produced, by your management, upon the works of the enemy entitled you to—the highest praise.

Your abilities and acquirements I considered quite equal to any of your grade, and very superior to very many of them. I certainly viewed you as an efficient officer of the Pacific squadron.

I am, respectfully, your obedient servant,

E. A. F. LAVALLETTE.

WASH'N A. BARTLETT, Esq.,
Late lieutenant United States navy, Washington city, D. C.

Letter from Commander F. B. Ellison, U. S. navy.

HEMPSTEAD, LONG ISLAND, *January* 17, 1856.

DEAR SIR: In reply to your request, that I would state my opinion of your efficiency as an officer, and your deportment as a gentleman, during our recent association on board the "Jamestown," where you served under my command, I with great pleasure say that in every particular, as a zealous and capable officer, and a well-informed, intelligent gentleman, I regarded you as most exemplary. Commodore Crabbe frequently expressed himself to me in very warm terms of you as a highly accomplished officer, and like expressions were made from all your messmates in the ward-room, showing a uniformity of opinion throughout the ship.

Sincerely trusting that the error which seems to have been made in your case may speedily be rectified, and that you may be honorably restored to your former position in the navy,

I am, very truly, your obedient servant and friend,

FRAS. B. ELLISON,
Commander U. S. Navy.

W. A. BARTLETT, Esq.,
Washington, D. C.

Testimonial of Commodore Crabbe, U. S. navy.

U. S. SHIP JAMESTOWN,
Porto Grande, October 23, 1855.

SIR: I have received your letter of this day's date, containing a copy of a letter from the honorable Secretary of the Navy to Mrs. Bartlett, in relation to your retirement from the navy of the United States.

A ugh I have not received anything official from the department t. vet the honorable Secretary's letter to Mrs. Bartlett, rth by yourself, will no doubt justify me in re- ther duty on board this ship. In doing so, how- saying that I deeply regret the loss of your services.

Your gentlemanly and officer-like bearing whilst under my command has uniformly met my warmest approbation.

I am, with great respect, your obedient servant,

THOMAS CRABBE,

Commander-in-chief of U. S. Naval Forces, Coast of Africa.

Lieut. W. A. BARTLETT,
U. S. Ship "Jamestown."

Testimonial of Lieut. Commanding James M. Armstrong.

U. S. FLAG-SHIP "JAMESTOWN,"
Porto Grande, St. Vincent, October 23, 1855.

DEAR SIR: In forwarding you the enclosed letter from Commodore Crabbe, relieving you from further duty in this ship, I beg leave to assure you of my deepest regret for the cause that has produced it, and for the interruption of an intercourse and association always confidential, harmonious, and friendly.

I shall ever esteem you in your character as an officer and gentleman, and in parting from you tender you my sincerest wishes for your restoration to the service, and for your future welfare.

Very respectfully, your obedient servant,

JAS. FRANCIS ARMSTRONG,
Lieutenant Commanding.

Lieut. WASH'N A. BARTLETT,
U. S. S. Jamestown.

In the appendix will be found the warm testimonial of the commissioned, junior, warrant, and petty officers and crew, of the Jamestown.* They speak but one sentiment.

There still remains one commander whose testimony is worth more to me than all others beside, for he was my superior during most of the time which covers the transactions alleged against me. In contrast to the opinion of Lieutenant Missroon and his cabal on board the Portsmouth, I oppose the evidence of the commander of that vessel, and fear not, from the comparison, in the judgment of those who can rightly appreciate character.

WASHINGTON, D. C., *February* 13, 1856.

MY DEAR SIR: Your letter of the 6th instant was handed me, and should have been sooner answered, but for pressing engagements, which have occupied my time since its receipt. You state: "It has become necessary that I should exhibit to the government, to Congress, and to the people, such concise testimony as I can obtain as to my efficiency and qualifications as an officer of the navy—from which I have been most unjustly dismissed—and, therefore, I appeal to you

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* Appendix XV.

to state, in whatever manner and form you may please, whether I was or was not an efficient and capable officer in all particulars and at all times, as an upright, capable, and zealous officer of your ship and of the navy; and whether, by act or deed, which may have come to your knowledge, I ever attempted, in any manner, to avoid responsibility, or aught which friend or foe could allege against me; or whether any circumstances of duty, or otherwise, ever impaired my usefulness or your confidence in my integrity and ability, &c."

I have quoted largely from your letter, in order to a more succinct and direct reply to the several inquiries contained in it.

In reply, therefore, I take pleasure in stating that during your long service—from November, 1844, to May, 1848—in the United States ship Portsmouth, under my command, with the usual opportunities enjoyed by naval commanders of forming a just estimate of the merits and qualifications of those serving under them, I have no hesitation whatever in bearing my testimony to your high mental and physical qualifications and efficiency as an officer of the navy, and an accomplished sea officer.

At all times and in all circumstances I found you ready and willing for the various duties assigned you, on shore and on ship-board, and ever prompt, zealous, and capable in the performance of them. I always regarded you, sir, as a most useful officer, not only in the proper line of professional employment, but as interpreter and translator of important official correspondence during the revolutionary movements in California and the war with Mexico which followed; your services were of signal importance to your commander, and (as regarded by him) to the public interests at the time.

When, in the course of events, after the occupancy of San Francisco, it became necessary to establish the magistracy of that place, the duties of alcalde were assigned to you, and discharged with a faithfulness and ability which claimed for you the commendation of your immediate commander, as well as that of the commander-in-chief; and the people of the district, when required to elect their civil officers, manifested their high appreciation of your character and services in the magistracy, in according to you an overwhelming vote (over several candidates) for your continuance in office.

During your service under my command, you certainly did possess my confidence as an upright, intelligent, and most capable officer of the ship and of the navy.

Allegations were brought to my notice by officers of the Portsmouth, at San Francisco, in 1846, which you promptly met, by a demand for immediate investigation by court-martial or court of inquiry, which the exigency of the public service precluded at the time. I should have deemed it exceedingly unjust to you, sir, as well as to my own feelings, to have suffered any permanent impression to your prejudice, on my mind, until sufficient evidence had been adduced before a competent tribunal—until shown to be true.

I know of nothing that occurred during the cruise of the Portsmouth, or since, to the present time, that ought in anywise to diminish my friendly regard, or impair my confidence in your integrity, high capabilities and usefulness, as a naval officer.

I trust, my dear sir. that you may speedily satisfy the government, Congress and the people, of your innocence of any and all allegations of a prejudicial character, which may have operated in any degree in procuring your recent dismissal from the navy, and, by a speedy restoration, have it again in your power to render valuable service to your country, for which I regard you eminently qualified.

Very truly, I am your friend and obedient servant,

J. B. MONTGOMERY,
Captain U. S. Navy.

W. A. BARTLETT, Esq.,
Dexter's Hotel, Washington.

If there be anything imperfect or insufficient in the explanation or defence now submitted, it ought, in justice, to be remembered, that it is a hardship to be compelled to answer charges of such a character as many of those now brought to bear against me, after so great a lapse of time. The most serious of them have been permitted to sleep for more than nine years, and were then revived, and made the foundation of the harsh action of the Navy Board, upon mere suspicion or report, without witnesses before them or notice to me. I had proffered myself ready and anxious to meet them when they were first privately suggested. They were brought into notice and publicity by my own act, and I was then fully prepared to face a full investigation. I have endeavored to show that it was through no fault of mine that they were not then authoritatively decided. In the interval I have been almost uninterruptedly in active service, with credit to myself and usefulness to the country. I had no knowledge of the revival of the unjust and unfounded imputations of my enemies, until, after the lapse of ten years, I found them revived in the prejudiced opinions and malignant inferences of avowed hostility before this committee.

The wise and necessary policy of the naval code, which limits the time within which a complaint must be preferred, would long since have consigned these charges to merited oblivion. This policy has been established for a purpose which, I believe, to be aptly illustrated by the present case. It is to guard "against acts of oppression and malice, by keeping charges against any officer in reserve for too long a period of time, and afterwards bringing them forward *collectively*, when he may be deprived of the means of exculpation."*

I must also respectfully beg to submit to the committee a few general remarks, in reference to the course of proceedings before the Navy Board, and the investigation before themselves.

The Board had their course distinctly marked out by the law under which they were convened. They had a specific subject of inquiry, and no sound and rational interpretation has attempted to extend their jurisdiction beyond the question of professional "efficiency." Fantastic and forced construction has, it is true, endeavored to engraft upon that word a latitude of meaning, and inclusion, which are utterly at variance with the purview of the statute and the object

*McArthur on Courts Martial.

towards which it is professed to have been directed. That the Navy Board, in my particular case, widely overstepped their jurisdiction, that they grossly abused their trust, and—as has generally been charged against them—violated the fundamental principles, not merely of law, but of that innate justice which has been implanted in the universal heart of man, and which forms the corner stone of civil institutions, and the only sure basis of society, few unprejudiced persons, I think, will now be found to deny.

The authority which this committee has undertaken to exercise has been placed upon the ground, that it was an inquiry instituted merely for their own satisfaction.

Whatever the purpose for which the investigation has been conducted, I am bound to believe that their object was to elict *truth*. When the actual course of their proceedings was developed, I felt constrained, in defence of my inalienable rights, to protest against it as unwarrantable and dangerous. It is now submitted that the result fully sustains the propriety of that position.

You have before you a mass of testimony, of which scarcely one word could, by possibility, have been received before any regularly constituted tribunal. The ordinary rules of legal investigation would have sternly precluded the reception of hearsay statements, of unauthorized opinions, and mis-recited and perverted quotations of written instruments. The glosses and comments of interested and prejudiced parties, would equally have been reprobated by the same inflexible principles. As the supposed object of your examination was precisely the same with that proposed in all the various forms of legal proceedings, namely, the ascertainment of truth, it is obvious, and undeniable, that the mode and the process to be put in action should have been consistent with those firm and true principles which have endured the test of long experience, and received the sanction of ages, and the stamp and currency of universal adoption.

The wise policy of the law rarely permits a man's estimated character to be drawn into discussion. However abandoned it may be, it has no legal weight in reference to the question of guilt. That must be ascertained solely through material and relevant facts and circumstances, established under the careful supervision of those inflexible rules which wisdom, justice, and necessity have concurred in adopting, as best suited to the development of truth.

But whether my character has, or has not, been properly and justly placed in controversy, whatever mode of attack has been resorted to, however it may be—if by accident or design—that bitter and unrelenting personal enemies—including, as I believe, all who, throughout the service, would exhibit hostility—are alone arrayed as witnesses against me, I have the right to demand, and I do demand, that I shall be judged by FACTS alone.

I can appeal, with entire confidence, to the esteem and high commendation of every chief—whether in the naval service proper, the coast survey, or in the civil government—under whom I have ever performed either naval duty, scientific labors, or judicial functions.

No charge or complaint has ever been preferred against me before the department; and its records show an official career of twenty-three

years, unblemished by an accusation, untainted by a reprimand, untarnished by a single act of insubordination, disobedience, or neglect. No imputation, from any quarter, has been advanced against me except from Lieut. Missroon and his confederates. My most bitter enemy does not attempt to withhold the concession that I am, in every point of view, competent to the efficient discharge of all the duties of my profession, both ashore and afloat.

In defending myself from unjust assaults, I am justified in referring to the various services I have been enabled to render to my country. They will be found to be as diversified, as continuous, as zealously, conscientiously and meritoriously performed, and as useful and beneficial in their results, as those of any officer of my rank and standing throughout the service.

I now conclude the observations which have been deemed proper to be submitted in my defence. If I have been obliged to animadvert with some asperity upon the testimony adduced against me, it has been as much in sorrow as in just indignation. It may be that the mode in which it was taken necessarily led to inaccuracy of statement. But the vindictive spirit which has accompanied it seems to admit of no such conclusion. With that absence of moderation and restraint which ever characterizes associated action, directed toward a particular end, I have been attacked, not with the legitimate weapons of legal warfare, but by prejudiced *opinions* and perverted *inferences*.

I seem to have been selected as a proper victim to be offered afresh to the implacable manes of that dead inquisition whose pagan spirit clamors for more blood to be sprinkled even upon its tomb.

It may be, that in the great contest which is now waging between the principles of justice and the powers of persecution; I may fall, a proscribed and a predestined victim. But, even in that hour, I will proclaim—with the solemnity and the sanctity of a dying declaration—my innocence of the disreputable imputations with which my conduct has been aspersed; and I know that if that justice of my country, to which I now appeal, cannot intervene in time to *rescue* me, yet that it will, at length, *redeem* my name and my reputation from unmerited reproach and undeserved condemnation.

WASHINGTON ALLON BARTLETT.

Hon. STEPHEN R. MALLORY,
Chairman of the Naval Committee of the Senate.

I transmit herewith my answer to the charges and testimony before your committee on the subject of my memorial.

I trust it will be found to be conclusive; but should there remain any doubt upon the minds of the committee, I stand prepared, whenever or wherever opportunity shall be afforded, under those safeguards which the laws of the land have prescribed for the protection of the innocent, to "make good my defence."

In case this course should be authorized and required, I beg leave to append a list of my witnesses.

I am, respectfully, &c.,

WASHINGTON A. BARTLETT.

MAY 5, 1856.

List of witnesses to testify as to the charges before the committee.

Captain J. B. Montgomery, United States navy.
Lieutenant Richard Forrest, United States navy.
Lieutenant J. Blakely Carter, United States navy.
Henry B. Watson, esq., late captain United States marine corps.
Joseph W. Revere, esq., late lieutenant United States navy.
Thomas O. Larkin, esq., Monterey.
Mrs. Thomas O. Larkin, Monterey.
James W. Bingham, esq., New York.
E. H. Harrison, esq., Philadelphia.
Hon. H. J. Anderson, Commissioner of Customs.
Thos. L. Smith, esq., First Auditor.
William L. Hodge, esq., ex-assistant secretary.
Professor A. D. Bache, superintendent United States coast survey.
Captain A V. Frazier, United States revenue service.
Commodore T. Ap Catesby Jones, United States navy.
A. C. Rhind, esq., late lieutenant United States navy.
Commander Cadwallader Ringgold, United States navy.
Lieutenant John Downes, United States navy.
Hon. R. M. Price, governor of New Jersey.
Hon. Joseph Lane, member of Congress.
Hon. Mr. Winslow, member of Congress.
Commander G. J. Van Brunt, United States navy.
Henry Mellus, esq., Salem.
Colonel Brinsmade, Washington.
Donn Piatt, esq., Ohio.

Witnesses as to my professional standing and character, under whom I have served.

Commodore J. D. Sloat.
Hon. Commodore R. F. Stockton.
Commodore E. A. F. Lavallette.
Commodore Thomas Crabbe.
Commander Henry W. Morris.
Commander James Glynn.
Commander Francis B. Ellison.
Commodore T. Ap Catesby Jones.
Captain J. B. Montgomery.
Captain Levin M. Powell.
Commander Thos. R. Gedney.
Captain William Inman.
Captain J. B. Hull.
Commodore Silas H. Stringham.

Second officers of the navy generally.

Com. Cadwal'der Ringgold, U.S.N.
Lieut. J. C. Carter, U. S. N.
Lieut. E. A. Barnett, U. S. N.
Lieut. W. D. Porter, U. S. N.
Com. T. Darrah Shaw, U. S. N.
Lieut. L. C. Sartori, U. S. N.
Com. E. W. Carpenter, U. S. N.
Com. Robert Ritchie, U. S. N.
Com. Oscar Bullus, U. S. N.
Com. Henry Eagle, U. S. N.
Com. William C. Whittle, U. S. N.
Com. Chas. H. Davis, U. S. N.
Lieut. John J. Glasson, U. S. N.
Lieut. H. N. Harrison, U. S. N.
Lieut. T. M. Brasher, U. S. N.
Lieut. John N. Maffit, U. S. N.
Lieut. C. Van Alstine, U. S. N.
Lieut. J. C. Williamson, U. S. N.

Lieut. M. C. Marin, U. S. N.
Lieut. C. Ap R. Jones, U. S. N.
Lieut. T. H. Patterson, U. S. N.
Lieut. Silas Bent, U. S. N.
Purser T. M. Taylor.
Surgeon Clymer.
Surgeon Edwards.
Lieut. Julian Myers.
Chaplain C. W. Thomas.
Lieut. John E. Hart.
John Etheridge, esq., Navy Dep't.
J. S. Thornton, late passed mid'n.
Lieut. M. P. Jones.
Lieut. J. M. Bradford.
J. J. Walbach, esq., late lieuten't.
&c., &c., &c.

APPENDIX.

(I.)

WASHINGTON, D. C., *April* 14, 1855.

DEAR SIR: I received your letter of the 10th instant, late on the evening of the 12th, and in compliauce with your request proceed to reply to the questions therein propounded, as follows:

At the time you reported to me at Portsmouth, N. H., for duty on board the United States ship Portsmouth, in November, 1854, or thereabout, you informed me that, at the suggestion of the Messrs. Harper, of New York, you had brought with you a well selected library for the use of the crew, which that firm had offered to dispose of at an unusually low rate of cost, provided the men were willing to pay for them by voluntary subscription, and I would permit them to be received in the ship; otherwise, that you were requested to return them to New York. Feeling no disposition whatever to oppose an arrangement calculated, as I conceived, to enlarge the sphere of rational amusement and improvement for the ship's company, I referred you to the executive officer, with directions to say to him I had no objection to the reception of the books upon the proposed condition, and they were taken on board, and, I believe, generally used by the reading portion of the crew during the long cruise that followed. I saw nothing in the transaction on your part, at the time, nor do I now, that could in anywise attach censure to your conduct, or cause me to question the integrity of your motive in the premises; and I have no doubt that the recreation derived from the perusal of said books contributed, in no small degree, to the contentment and satisfaction of the crew, so remarkably prevalent in the Portsmouth, throughout the whole cruise.

In regard to the correspondence referred to, if my recollection serves me, the dissatisfaction of the ward-room officers with your conduct, in regard to the mess, and other matters, was first brought to my notice by your letter, (the first of the series,) dated at Yerba Buena, October 15, 1846, enclosing a note addressed to you by the officers of the ward-room, dated October 8, 1846.

In the letter you showed no disposition to avoid a thorough investigation of the conduct complained of, but, on the contrary, expressed an earnest desire to meet the allegation set forth in the said note, and

confidently asserted your ability to rebut them. I am not aware, sir, that you since (at any time) expressed or exhibited a desire to avoid investigation of the complaints made against you by the ward-room officers, or that any act or suggestion of yours could justly sanction the idea of such desire on your part.

In answer to the concluding enquiry in your letter, I have no recollection of ever seeing you unusually flurried, or thrown off your balance, on duty, in a manner to interfere with its performance, when unexpectedly called upon to act. Nor am I aware that you are more subject to infirmities of this character than many excellent officers with whom I have served.

I am, dear sir, respectfully, your obedient servant,

JNO. B. MONTGOMERY,
United States Navy.

W. A. BARTLETT,
Dexter's Hotel.

(II.)

WASHINGTON, *April* 30, 1856.

SIR: In reply to your note of this morning, I have to state, that some time during our cruise in the Portsmouth, you did let me have a quantity of segars, but how many, or at what price, I do not recollect; but am sure that I considered it an accommodation at the time. I do not consider the transaction at all incompatible with the character of an officer or gentleman. I have had similar transactions with other officers, and did myself let an officer have a sword and belt, he being fixed as I was, when the articles could not be had. I have no knowledge of your selling segars to any other person than myself. I believe you let me have all you had.

Very respectfully, your obedient servant,

R. FORREST,
Lieut. United States Navy.

W. A. BARTLETT, Esq.,
Washington, D. C.

(III.)

MESSMATES: Learning from Messrs. Missroon and Watson that there is dissatisfaction expressed with my late catership, and especially with regard to the amount of money charged by me as expended for marketing at Mazatlan, I desire your calm consideration of the following explanations, in order that I may be able to satisfy *all*, since the present state of my mind, under the implied error in my accounts, is too *inful to* be borne. I cannot but believe that every one of my mess-

mates is entirely unwilling to do me the least injustice; therefore I hold myself ready to make all the explanation my accounts can give; but I wish the case fairly stated. My accounts show as follows for marketing at Mazatlan:

March 18th, $4; 19th, $6 - - - - -	$10 00
March 20th, $4; 21st, $4; 22d, $5 - - -	13 00
March 23d, $5; 24th, $4; 25th, $4 - - -	13 00
March 26th, $3; 27th, $3; 28th, $4; 29th, $4 - -	14 00
March 30th, $4; 31st, $4; April 1, $5 - - -	13 00
	63 00
Add purchased at the grocery: pepper, 25c.; vermicelli, 25c.; sage, 6¼; vegetables, 50c - - - -	1 06
18th to 1st, both included, is 15 days - - -	64 06
Daily - - - - - - - -	4 27

With regard to the above, most of it was spent by Neal, who was market boy, and who, Dr. Wood said, knew all the prices and best places; besides, I frequently called him to my room and took a note of every item, to see that he accounted for all the money given him. Neal will also recollect that he bought all the *tongues* that could be had at twenty-five cents each, and put them in pickle; some days two, some three, some four. In consequence of having more company than usual, we some days sent twice to market. Neal will recollect it, I am certain. Again, I some days got fruit, oil, &c., which is included in the marketing, being taken from my daily notes. When I took money out of the mess box, it was charged as expended; if any was returned, it went the next day, or was spent during the day for some necessary article.

[NOTE.—Mr. Watson obtained the idea that there had been $80 and over expended at market in thirteen days. *It is not so charged in my book.* That amount would include:

Twenty-five pounds sugar - - - - - -	$3 75
Pudding dishes - - - - - - -	1 75
Plates - - - - - - - -	1 25
Chinese shades - - - - - - -	4 00
Pepper, vermicelli, &c., at the grocery - - -	1 06
One pound pepper - - - - - - -	75
Washing table cloths - - - - - -	2 00
	17 06
Marketing - - - - - - - -	63 00
Equal to - - - - - - -	80 06

But this was made up in amounts as above; the real marketing is as stated on first page.

W. A. BARTLETT.

There being several ships in the harbor, the mess had more or less company at dinner every day, and provision was made accordingly.

W. A. B.]

I purchased stores as fast as possible—indeed, I seemed to have no time, for when I took the catership, the succeeding Wednesday was fixed upon as our day of sailing—as supposed, for the Columbia river. Of salt provisions we had but a small quantity, and it was absolutely necessary they should be supplied with such articles as could be had to supply the table on the passage.

I therefore ordered the poultry found charged in Stapp's bill; and he furnished the sugar at fifty cents the arrobe less than any one else would sell it for, while he asked no more for his poultry, as I found by walking over the whole town.

His bill of poultry, sugar, and corn (having deducted the sack of sugar which I let the captain have) is - - - -	$90 50
I afterwards purchased of him—	
Squashes and vegetables - - - - -	10 00
Bill of brig Sirius - - - - - -	18 25
Twenty-six lbs. lard, (25 cts. per lb.) - - -	6 50
Twenty-six lbs. vermicelli, (25 cts.) - - -	6 25
Tin box for same - - - - - -	50
Porterage, (having two men going with me three hours,) -	1 00
Mustard, 75c.; oranges, $2 50 - - - -	3 25
Tomatoes, $2; onions, $1 50 - - - -	3 50
Baking dishes, $1 75; plates, $1 25 - - -	3 00
Twenty-five lbs. sugar, purchased the second day of my catership, to save the white box then on hand - -	3 75
Four chickens, 62½ cts. each - - - -	2 50
Flour, one sack - - - - - -	10 00
Paid a bill of $3 25 for corned beef, forgotten by Dr. Wood	3 25
	162 25
Of Williams, fresh oysters - - - - -	1 25
One lb. black pepper - - - - -	75
Washing table cloths, (eight,) - - - -	2 00
Twelve turkeys - - - - - -	20 00
Twenty-four ducks, $10 per doz. - - - -	20 00
Rice of Hanson, supplied by purser's steward - -	2 50
Paid for Chinese screens - - - - -	4 00
I did not intend to buy but one, but the second being sent to exchange, it became injured and I then paid for it.	
	212 75
Add marketing sheet - - - - -	64 06
Total amount expended at Mazatlan - - -	276 81

W. A. BARTLETT.

Received of purser - - - - - -	$200 00
Received of Dr. Duval - - - - -	43 00
Received of purser - - - - - -	20 00
	263 00
Received of Dr. Wood - - - - -	20 00
	283 00
	276 81
On hand when I left Mazatlan - - - -	6 19

Besides the $2 25 paid by the old members to settle the cook's balance.

Mess expenses at Monterey.

22d to 28th, both inclusive, I expended in cash for eggs, milk, vegetables, and butter - - - -	$8 00
Thirteen pounds of butter of Mr. Little - - -	6 50
Cash sent ashore by Mr. Missroon, 5 days - - -	5 12
The 4th, 5th, and 6th - - - - -	3 75
The 7th, 8th, 9th, and 10th - - - -	3 50
The 11th and 12th - - - - -	1 50
The 13th, 14th, and 15th - - - - -	2 25
The 16th, 17th, and 18th - - - - -	3 00
The 19th, 20th, 21st, and 22d - - - -	4 25
The 23d, 24th, 25th, and 26th - - - -	4 50
The 27th, 28th, and 29th - - - - -	3 25
Four pounds butter of Mr. Little - - - -	2 00
Fish of the Kanakas - - - - -	1 00
One barrel of flour, "Barnstable" - - -	14 00
Two pitchers, "Barnstable" - - - -	4 00
Mr. Green's bill - - - - - -	56 00
Mr. Green's bill, sea stores - - - -	44 62
	167 24
Add cash paid purser's steward for rice - - -	4 75
Bread and rice paid for by steward - - -	5 00
	176 99
Washing table cloths - - - - -	1 75
	178 74
	276 81
	455 55

Receipts at Mazatlan - - - - - -	$283 00
Monterey - - - - - - - -	175 00
	458 00
	455 55
	2 45
Paid Mr. Watson - - - - - - -	$2 50

W. A. BARTLETT.

Mr. Bartlett's explanations.

Mr. Watson to-day returned my vouchers to me, and said when we first examined them we thought there was a deficiency, but all was proved to be correct.

W. A. BARTLETT.

JANUARY 5, 1848.

(IV.)

SAN FRANCISCO, *August* 20, 1849.

Washington A. Bartlett,
To ship John G. Coster, Dr.
To freight p. bill lading - - - - - $35 00
Received payment,
ALFRED ROBINSON,
for J. Ball Stephens.

(V.)

TREASURY DEPARTMENT, *June* 16, 1852.

SIR: Congress having authorized the construction of light-houses at different points on the Pacific, the department contemplates furnishing them with the improved French lens, provided the needful appropriation can be obtained to cover the increased expense; but previous to giving any positive orders for the purchase of them, it wishes to obtain particular and detailed information upon all points connected with the subject, and for that purpose has appointed you to proceed to Paris.

You will, on your arrival, make yourself acquainted with the different manufacturers of these lens, and ascertain whether there is any choice between them as to the quality and excellence of their

work and their respective prices. The department wishes you to procure the latter in detail, not only as regards the different sizes or orders, but also for the separate portions of each so far as they can be furnished by the manufacturers. In the detailed statement of items and prices already in the possession of the department, it is presumed that there are many items enumerated that are either extra or unnecessary, and it is the wish of the department that, after a full consultation with the proper parties, you will determine upon all the accessories that will be necessary to make the entire lighting apparatus, including the lantern, complete and suitable for the intended purpose, without including anything which, in your opinion, is not necessary. The information thus obtained, distinct and separate for each size or order of lens down to the sixth order, or lower, if any smaller order exists, you will please forward as promptly as possible to the department, exhibiting the full and entire cost of each on ship-board at Havre, with full remarks and explanations on your part, so that the department may be enabled to act advisedly in its further proceedings in the matter.

You will particularly ascertain and report on the subject of any recent improvements in the manufacture of these lens by which their power has been increased, and obtain the best information as to the distance at which the different orders can be distinguished under ordinary circumstances when properly located and at suitable elevations.

You will receive herewith the plans and specifications of the lighthouses as they have been contracted for on the Pacific; and you are probably aware, from actual observation of most of the locations, their elevation and the nature of the neighboring coast. I will only add, on this point, that in no case is the lighting apparatus to be less than 100 feet above the water; and if any of the proposed sites are low ground, the tower must be elevated accordingly.

In making your selection of the needful items for the proper construction of the lantern and lighting apparatus, &c., you will, of course, be governed by the nature, size, &c., of the towers on which they are to be placed, agreeably to the contract; and it will probably be more advisable to make these calculations on the basis that the towers may be finished before the lighting apparatus reaches the respective points. If, however, there is a material difference with any portion of the apparatus fixtures, &c., when they are to be placed on a tower already finished as the present ones are to be, or when furnished, to be put in their proper places during the construction of the tower, you will please note the same in detail in your report.

The department would also wish to have the statement of cost for any different kinds of materials which are, or can be used in the construction of these apparatus, such as bronze, copper, iron, &c., which might be indiscriminately used, with your views as to which would be most advisable under all the circumstances.

Your report will also include the kind and cost of all the needful items necessary for the use of the light keeper, as connected with the due care and operation of the light after it has been completed and put into use, including not only such items as will be permanently re-

quired for the above purpose, but likewise those which are in regular consumption, estimating the supply of the latter for a period of one year.

It has been suggested, that the sixth order lens could be advantageously employed in various small lights on the coasts and harbors of the United States, without making any other change except substituting them for the present reflectors. You will please ascertain on what terms this order of lens can be procured with a suitable mechanical, or other lamp, and without other fixtures or accessories of any kind; or if you find, on enquiry, any of the latter would be absolutely necessary, in order to make the suggested change, then to include the cost of them also, but to have nothing of the kind that is not absolutely necessary.

The department, after hearing from you as regards these—the smaller sized lens—and obtaining further information in connexion with the subject of this size, may probably try the experiment with six or eight of the smaller light-houses, and if it succeeds, extend to a much larger number.

With this you will receive a copy of a communication from the Lighthouse Board on the subject of the French lens. The department has not yet approved of this report; and it is not, therefore, furnished to you as a guide, but merely in case it may contain some details or information which might be useful to you. The department will make no determination as to the kinds or orders of the lighting apparatus and fixtures as recommended in this report, until after it hears from you, and the needful appropriation shall have been made by Congress.

As an officer of the government, you, of course, are aware that the department is prohibited, by law, for making you any compensation for the service you may render in this business, and can only pay for your passage to and from Europe, and the customary travelling expenses to Paris, and your personal expenses while there, with the understanding, as agreed with you, that they are not to exceed three per cent. on the expenditures that you may make for the purchase of the different lighting apparatus.

You will please execute the customary bond required from all disbursing officers of the department in the sum of $15,000, with surety, to the satisfaction of the department, and forward the same previous to your departure.

The department will hope to hear from you fully and promptly after you reach Paris..

Very respectfully, your obedient servant,

WM. L. HODGE,
Acting Sec. of the Treasury.

W. A. BARTLETT,
United States Navy.

(VI.)

MORRISTOWN, NEW JERSEY,
April 29, 1856.

DEAR SIR: Your letter of the 29th instant, and accompanying papers, came duly to hand.

Long before you knew it yourself—you being abroad on duty at the time—I was informed, through the papers, that you had been dropped from the navy list without the least intimation, or a chance given you to defend yourself from the secret charges which may have been trumped up by the odious and abominable inquisition or council of fifteen—I was going to say of *ten*, but that was in Venice, I believe, and not in this free and enlightened country.

* * * * * * * * * * *

"In answer to your interrogatory, which is, whether the statement of your mess accounts, as given by Watmough and Watson, 'should be taken for true by all men,' I unhesitatingly answer, yes! These accounts were not examined at the time by myself, but they were so examined by a deputation of the mess, as well as I remember, and pronounced correct."

"In answer to your second query, did you (I) ever hold me blameable in this matter; was there any cause for censure? No one could blame you after your accounts were passed in the manner above mentioned—which was done by the mess—which fact left no cause for censure that I could see. In answer to the third question, what amount of mess bill was reasonable at that time? In answer, that everything was high, and especially at Mazatlan, and the mess bill in proportion, but I do not remember the exact amount."

"The further persecution of you, to which I was a witness on board the Portsmouth, in the many small ways in which naval tyrants show their malignity, I not only did not approve, but spoke freely of, among those of my messmates with whom I was on intimate terms, as petty and ill-natured in the extreme."

* * * * * * * *

"I undoubtedly remained on perfectly friendly terms with you for the cruise, and I certainly should not have done so if you had been proved, as you say, 'dishonest,' nor would any others of my friends among our messmates, I believe."

* * * * * * * *

"Finally, I have to state that I consider you, among many others, as the victim of a most despotic, tyrannical, and despicable law, unconstitutional in its enaction, and under which I would not hold a commission."

* * * * * * * *

"That you and those injured may triumph over the secret malice of those who stab in the dark, as well as those who unwittingly aided in the perpetration of such monstrous injustice, at last, is the sincere wish of your friend and servant.

J. W. REVERE.

WASHINGTON A. BARTLETT,
Washington, D. C.

(VII.)

No. 2334. TREASURY DEPARTMENT,
First Auditor's Office, January 30, 1855.

I hereby certify that I have examined and adjusted an account between the United States and Washington A. Bartlett, special agent, for his travel and personal expenses from Washington city to Paris, France, and returning; in relation to lighting apparatus for the coasts of California and Oregon; and find he is chargeable—

To amount allowed him on account of personal expenses per Report No. 2092 - - - - - - -		$2,712 42
		2,712 42
I also find that he is entitled to credit, by amount of this disbursement, for travel and personal expenses, per vouchers, herewith - - - -	$3,752 18	
From which deduct the excess above three per cent. on $90,413 90, the amount of his expenditures for lighting apparatus on the coasts of California and Oregon, per Reports No. 595 and 2092; to which sum (three per cent. on his expenditures) his personal expenses are limited by his letter of appointment, dated 16th June, 1852 - -	1,039 76	
		2,712 42
		2,712 42

As appears from the statement and vouchers herewith transmitted for the decision of the commissioners of custom thereon.

T. L. SMITH,
First Auditor.

To the COMMISSIONER OF CUSTOMS.

OFFICE OF THE COMMISSIONER OF CUSTOMS.

I admit and certify the above balance, this 30th day of January, 1855.

H. J. ANDERSON,
Commissioner of Customs.

To the REGISTER OF THE TREASURY.

(VIII.)

Copy of W. A. Bartlett's general bill of expenses at Fenton's hotel, London, and showing the items extracted from it, to make up Mr. Bartlett's "*personal expenses,*" which were receipted for by J. Mayhew Chapman, in the usual form of a public voucher, for $45.

299. Lieut. BARTLETT, U. S. N.,
At Fenton's Hotel.

1854.

		£	s.	d.
Sept. 3,	Omnibus	0	12	6
	4 Cabs, 6s. 8d., 2s.		8	8
	Breakfast, chops, eggs, potatoes, &c.		13	6
	Dinner	1	12	0
	Ale		1	0
	*2 Claret		14	0
	Tea		1	6
	Evening paper, &c		1	6
	Wax lights		1	6
	Apartments	3	2	0
	Breakfast, steak and potatoes		10	0
		7	18	2
	Waiter		11	0
	Maid		7	0
	Porter		3	0
		8	19	2
	Cash to laundress	1	4	9
	Biscuits			3
	Cash, (self,)	5	2	6
	do. Baggage and Carriages	2	0	0
	do. Cab		3	6
	Dinner	1	8	6
	Ale		1	0
		£18	16	2
		5		
		90		
		3	90	
		$93	90	

As originally receipted in London.

W. A. BARTLETT's personal expenditures.

	£	s.	d.
From railway, self and baggage		6	0
Cab hire, 3 trips		8	8
Breakfast, (self,)		4	0
Dinner, (self,)		7	0
Tea		1	6
Papers and light		3	0
Apartments	3	2	0
Breakfast, (self,)		4	0
	4	16	2
Waiters		7	6
Porter		3	0
Laundress		15	0
Carriage hire two days and a half.	2	0	0
Cab		3	6
Dinner, (self,)		7	0
Telegraph'g to and from Folkstone		9	8
	£9	1	10
To the £	$5		
	$45	43	

As originally charged; from which, at the suggestion of the commissioner of customs, two guineas per day, or $11 08, was deducted for "parlor."

This account was admitted by the Auditor of the Treasury, for the sum of $34 35.

(IX.)

OFFICE LIGHT-HOUSE BOARD,
Washington City, October 15, 1852.

DEAR SIR: I have written to-day to M. Lepaute in relation to the apparatus for Sand Key, to which you called my attention in your private note to me some weeks since.

If the apparatus can be had, I am authorized to say that the board will give the necessary orders to have it forwarded without delay, and prompt payment provided.

I wish you would see Mr. Lepaute, and explain to him fully the difference between the light-house department, as at present organized, and the previous mode of managing the lights of this country. We may want some 3d, 4th, 5th and 6th orders of lenses, and I wish you would ascertain from both Lepaute's and Letourneau's establishments

what are the prospects of our getting these different orders, and in what numbers, within the next year, and if there is any change of prices. We wish these people to understand we will not allow for the commissions of agents.

The order will go direct, and payment be made through official channels, either in New York or elsewhere. I wish you would forward us something of a practicable kind relating to colza oil. Any printed or manuscript notes on the subject will be most thankfully received, and the expense of purchase refunded.

I would name the following as the most important heads for consideration:

Colza.—The plants from which the oil so called, or imitations of it, are procured; their qualities, if they vary; soil, climate, mode of culture, season of planting, growth, maturity; mean temperature of localities; extremes, frost, heat, moisture of climates; mode of cutting, drying, storing, working, extracting of the oil, purifying, preserving. Amounts annually supplied; from how many acres of ground; how many gallons of oil, &c., &c.

Very respectfully, yours,

THORNTON A. JENKINS,
Secretary Light-house Board.

Lieut. W. A. BARTLETT, *U. S. N.*

(X.)

TREASURY DEPARTMENT,
Light-house Board, November 17, 1852.

SIR: Your communication of Saturday last, with the accompanying report, papers, and drawings, from Lieutenant Bartlett, U. S. N., special agent of the Treasury Department in Paris, to procure illuminating apparatus for the light-houses on the western coast, have been received, and in reply I am directed by the board to say—

1st. That the manner in which the duty of Lieutenant Bartlett has thus far been discharged merits their fullest approbation, and that his report is full of information and very explicit.

2d. That they recommend the Treasury Department to send to Lieutenant Bartlett the sum of 48,500 francs, to meet the contracts made by him, as requested in his report to the department. These contracts are, in the opinion of the board, made on very favorable terms.

3d. That they recommend to the Treasury Department to authorize Lieutenant Bartlett to make contracts for the illuminating apparatus for the remaining lights recommended by the board in the following order of importance:

1. The Farallones, SE. off San Francisco, (flashing light,) 1st order, similar to the one designed for Sand Key.

2. Point Conception, California, (revolving light,) same order and description.

3. Cape Hancock, or Disappointment, (fixed,) same order.

4. Point Loma, San Diego, California, (fixed,) same order.
5. Point Pinos, Monterey, (fixed,) same order.
6. Humboldt Harbor, (fixed,) 3d order.

The contracts to be according to the proposals, unless more favorable terms can be procured.

Further, that a set of light-house tools and a suitable quantity of cleaning materials be provided, according to the prices of the French administration of light-houses, and properly packed and marked, and sent with each set of illuminating apparatus to the western coast.

The board has already taken steps preliminary to ordering the illuminating apparatus for Sand Key, and now being informed by Lieutenant Bartlett's report that the apparatus is finished, will complete the action contemplated.

I have the honor to be, very repectfully, your obedient servant,

WM. BRANFORD SHUBRICK,
Chairman Light-house Board.

The Hon. SECRETARY OF THE TREASURY.

(XI.)

TREASURY DEPARTMENT,
Office Light-house Board, March 14, 1853.

SIR: I am directed by the Light-house Board to request your attention to the enclosed orders to M. Lepaute.

The number of apparatus, &c., has been as nearly divided as possible between Messrs. Sautter & Co., through their agent, H. De Courcey, esq., in New York, and M. Lepaute. It is very important that these articles should be furnished in the shortest possible time. Messrs. Sautter & Co. have been informed, as well as M. Lepaute, that you will have the direction, examination and test of all these articles so long as you remain in Paris, after which steps will be taken to obtain a proper person to attend to setting up and examining such as may be ordered. If these orders can be filled at an early day another will follow immediately.

The implements, tools, &c., and a year's supply of the articles enumerated in the list No. 1, are desired to accompany the Sand Key apparatus when it is shipped.

The articles enumerated in lists Nos. 1 and 2, as well as the apparatus ordered, must be of the quality, quantities, and prices of the French administration, without they can be had for less.

If the little lighting lamps, called "Lucernes," do not cost more than a trifle each, you may order a number of them. Each light ought to have one, but the price must guide, as we cannot afford much for that object now.

Very respectfully, your obedient servant,

THORNTON A. JENKINS,
Secretary.

Lieut. W. A. BARTLETT, *U. S. N.*,
Agent U. S. Treasury Department, Paris, France.

(XII.)

TREASURY DEPARTMENT,
Office Light-house Board, May 16, 1853.

SIR: Your letter of the 12th, 13th and 14th ultimo to this board, with enclosures, have been received, and your letter of the 14th ult. to the Secretary of the Treasury has been referred to this office.

The Sand Key apparatus will probably be applied to the Cape Hatteras tower to save time, but the order for the duplicate, with a lantern, can be changed, as you suggest, to a duplicate of the one for the Farrallones and Cordouan. The lantern should accompany it, but it is desired that no unnecessary expense should be incurred in constructing the lanterns, particularly now, that iron and copper are both so high. The desire of the board is utility, with as little ornament, not necessary to the efficiency of the objects, as possible. The best lights, at the smallest expense consistent with utility and economy.

Messrs. Lepaute and Sautter & Co. may be informed that, in a short time, additional orders will be sent for the lights authorized at the last session of Congress, if there is any prospect of those now ordered being finished soon.

The price of copper to which you refer is, of course, to be considered in the work, but as it will no doubt very soon go down again, the proper deduction will be expected.

Mr. Lepaute and Messrs. Sautter & Co. must be made to understand the difficulty of making advances on account of apparatus.

The government, it is not to be expected, will keep a special agent in Paris for the purpose, as we are now just commencing an extensive system, and no disbursing officer would be willing to make advances without authority, which would be attended in every case with difficulty.

I think, if these gentlemen understand their own interests, and are disposed to take a proper view of the matter, they will be content to receive their money immediately on the delivery of every article, either in New York or Paris; in New York would be better for us. In that way there would be no difficulty, and, instead of a multiplicity of orders, &c., passing through the different offices of the Treasury Department whenever a payment is to be made, the funds would go direct to the agent in New York, or, if preferred, to Paris.

You can readily see that disbursing officers would not advance funds for so distant a place, and it would be necessary to have written contracts sent over and approved, with security to each, for the faithful performance of the duty, &c., which would consume an immense amount of time. The loss of interest must be a small matter to the manufacturer, and as the embarrassments would be very great, the board trusts that these gentlemen will see the propriety of receiving orders from the board in good faith, and receiving the payments, which shall be made promptly, either through the American minister in Paris, when there is no special agent, or to an agent legally authorized to receive it, in this country.

If, however, they insist upon having advances of one third, then we must adopt a different course, which would be attended with much inconvenience, of making up a list and going through a multiplicity of forms, before the order could be transmitted. Messrs. Sautter & Co. have been informed already on this subject, and the board trusts you will explain the difficulties to Mr. Lepaute.

There would be no objection to making advances if any disbursing officer could be authorized to do so, which it would be impossible to do in the ordinary operations of the government.

It is very desirable that the board should be informed as soon as possible when the apparatus is about to be shipped, so as to be ready to receive and make the payments without delay.

* * * * * * * *

It is very desirable that the California apparatus should, if possible, be shipped direct from France to San Francisco, to the light-house inspector, care of the collector of customs, so marked as to prevent any difficulties about duties.

Illuminating apparatus, &c., ordered by the board for the Atlantic coast, except in special cases, should be sent to the collector at New York direct, with a letter and bill of lading to him, and one to this office.

The prices charged by the express are too high; and, except in the winter months, it will be better to ship by the packets than by the steamers.

It is desired that the Messrs. Sautter & Co. should add to the list of articles, ordered some time since, a few dozen of the red glass chimneys used in the French lights as specimens. They should be a *pale pink color*, and of the best quality. If it be necessary to do so, the box may be packed with linen towels for cleaning lights. We want to get some of all these things.

The lucernes, &c., I presume will be sent very soon. We find difficulty in getting the various necessary articles for our lights, and shall, hereafter, take time to get such from abroad as are necessary.

These orders Lepaute, and Sautter & Co., will, of course, have equally, so long as they are disposed to act justly and promptly. We want to improve our lights; and they, no doubt, wish to furnish the supplies.

We may want several first and second order lenses this summer, and it may not be amiss for these gentlemen to say when we could get them, if ordered.

Very respectfully, your obedient servant,

THORNTON A. JENKINS,
Secretary.

Lieutenant W. A. BARTLETT, *U. S. N.*,
Special Agent Treasury Department, Paris.

(XIII.)

WASHINGTON, *December* 5, 1853.

MY DEAR SIR:

* * * * * * * *

I have not seen Lieutenant Jenkins or the Light-house Board since my return to Washington, but expect to do so soon. When last here your doings had given great satisfaction. For myself, I do not believe we could have succeeded in any other way so well in setting our machine in motion, as in the way we took by suggesting to the Secretary of the Treasury to send you abroad.

Yours, truly,

A. D. BACHE.

Lieutenant W. A. BARTLETT, *U. S. Navy, Paris.*

(XIV.)

TREASURY DEPARTMENT, OFFICE OF COMMISSIONER OF CUSTOMS,
January 12, 1854.

SIR: Your account for fitting Cape Hatteras light with first order of illuminating apparatus has been adjusted and closed on the books of the Treasury.

Respectfully yours,

H. J. ANDERSON,
Commissioner of Customs.

Lieutenant W. A. BARTLETT,
Agent for fitting Cape Hatteras light, &c.

(XV.)

Testimonial of all the commissioned officers of the United States flag-ship Jamestown.

PORTO GRANDE, ST. VINCENT,
October 24, 1855.

DEAR SIR: We entertain too high an appreciation of your character as a gentleman and an officer, and too warm a regard for you as a messmate and friend, to allow you to leave us without saying to you, in the sincerity of our hearts, that we deeply regret that you are about to part from us, and, above all, the cause that takes you away.

In the difficult and responsible relation that you have sustained to us, as executive officer of the ship, you have ever, whilst discharging your duties with fidelity, borne yourself towards us with the utmost frankness, conciliation, and courtesy. And, in the more intimate and kindly relation, as a member of the little society that we form amongst ourselves, and which can subsist in harmony only by mutual cultivation of friendly feelings and the practice of friendly offices, you have endeared yourself to us by your uniform amiability of disposition, and by the desire that you have ever evinced to cherish the most cordial intercourse with us all.

We therefore beg to assure you, that in parting from us you are taking leave of those who will ever remember you with pleasure, and who, whatever fortunes may betide you, will always continue your well-wishers and friends.

Ever, very truly, yours,

GEO. CLYMER,
Fleet Surgeon, ranking with Commander.
T. H. PATTERSON, *Lieutenant.*
EDWARD BARNETT, *Lieutenant.*
T. M. TAYLOR, *Purser, (rank of Commander.)*
JULIEN MYERS, *Lieutenant.*
SAM'L RICH'D SWANN, *Assistant Surgeon.*
JOHN L. HEYLEN, *Commodore's Secretary.*
JNO. E. HART, *Acting Master and Lieutenant.*
JAS. M. BRADFORD, *Acting Lieutenant.*
CHAS. W. THOMAS, *Chaplain.*

Lieutenant WASHINGTON A. BARTLETT.

Letter from the Junior Officers of the Jamestown.

UNITED STATES SHIP JAMESTOWN,
Porto Grande, Saint Vincent, October 24, 1855.

SIR: You are about to return to your home; in so doing the members of the steerage feel it their duty to express to you their deep regret, and their sincere gratitude for the extreme kindness with which you have universally treated them, during the time they have had the pleasure of being under your command. You may be assured that, after you leaving us, you will ever be cherished in our memory with feelings of the highest regard and esteem, in your character as an officer and gentleman.

Sir, we bid you, with sorrow, a hearty farewell.

With many wishes for your future welfare and happiness, believe us, very respectfully, your obedient servants,

N. B. CONCKLIN, *Master's Mate.*
C. W. LAWRENCE, *Master's Mate.*
VAL. HALL VOORHEES, *Master's Mate.*
O. N. HENCKEL, *Master's Mate.*
H. B. JOHNSON, *Captain's Clerk.*

Lieutenant W. A. BARTLETT, *United States navy.*

Letter from the Warrant Officers of the United States Ship Jamestown.

PORTO GRANDE, SAINT VINCENT,
October 26, 1855.

SIR: It is with feelings of the most heartfelt sorrow that we address these few lines to you.

You are about to return to your home, and we, as officers who have taken pleasure in being under your command, cannot think of your leaving us without expressing our thanks for the gentlemanly manner in which we have been treated by you.

Your name will ever live fresh in our memories.

Hoping that you may succeed in all your undertakings, we remain, yours truly,

WILLIAM COPE, *Gunner.*
JOHN McKINLEY, *Boatswain.*
JOSEPH R. SMITH, *Carpenter.*

Lieutenant W. A. BARTLETT, *United States navy.*

Testimonial from the Petty Officers and Crew of the Jamestown.

UNITED STATES SHIP JAMESTOWN,
Off Porto Grande, October 29, 1855.

SIR: In the discharge of my duties as sailmaker of this ship, I have learned much of the disposition of the crew, and the feeling they have toward you, particularly during the time you have served as executive officer, and beg leave to state that they, being aware of your intended departure for the States, have expressed a wish to me, and through me, to testify their regret that you have occasion to leave them prior to the end of the cruise.

Since I have been attached to the navy I have seen other officers who have gained the esteem of their ship's company, but never to such a degree as you have from the hardy sons of Neptune comprising this ship's crew. Your capabilities as a lieutenant, and your bearing as an officer and gentleman, have won their admiration, and they say they cannot let you depart without this token of their gratitude and their esteem. Very respectfully, yours, &c.,

WM. N. MAUL, *Sailmaker.*

Approved:
WM. PLUMMER, *Captain Forecastle.*
JAMES YOUNG, *Captain Fore-top.*
HENRY P. GRACE, *Captain Main-top.*
CHARLES STEWART, *Captain Mizen-top.*
THOMAS W. McCREADY, *Captain After-guard.*
THOMAS KITCHEN, *Captain hold.*
DAVID ESBECK, *Signal Quartermaster.*
GEORGE POTTER, *Boatswain's Mate.*
WILLIAM THOMAS, *Sailmaker's Mate.*
JOHN H. LOVELESS, *Carpenter's Mate.*
DANIEL HUSSEY, *Gunner's Mate.*
JOHN D. GORMAN, *Master-at-Arms.*
CHARLES SWANSON, *Yeoman.*
JAMES McFARLAND, *Cooper.*

P. S. They all wish to sign and approve, but as it would occupy too much time, and too large a space, I could only permit one from each part of the ship, who bears testimony as to the sentiments of the gangs to which they are attached.

W. N. MAUL.

(XVI.)

I also append the following letter from Hon. John Y. Mason, minister to France, in reference to the manner in which my duties, as special agent of the Treasury Department, were discharged, and the result of my services:

Letter from the Hon. Y. Mason, ex-Secretary of the Navy, to Hon. James Guthrie, Secretary of the Treasury.

PARIS, *September* 2, 1854.

DEAR SIR: Lieutenant Bartlett, of the United States navy, is about leaving Paris, on his return to the United States. It gives me great pleasure to bear my testimony to the care and vigilance with which this gentleman has performed his responsible duties since I have been here, and to express my admiration of the splendid lights which have been manufactured under his supervision for the coasts of the United States.

I do not believe that there are in the world superior mechanical structures for the safety of commerce than those which have been prepared here under the superintendence of Mr. Bartlett. The chief credit is unquestionably due to the faithful and skilful manufacturers, but no small share is, in my judgment, due to Mr. Bartlett, who has displayed zeal, industry, and intelligence in the performance of his duties. I hope that you will not consider me obtrusive in thus expressing my admiration of the lens lights prepared here for the exposed and dangerous coasts of my country.

I have the honor to be, most respectfully,

J. Y. MASON.

Hon. JAMES GUTHRIE,
Secretary of the Treasury, Washington.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 237.

ADDITIONAL PAPERS

IN RELATION TO

THE CASE OF WASHINGTON ALLON BARTLETT,

LATE A LIEUTENANT IN THE UNITED STATES NAVY.

Printed under a resolution of the Senate of August 1, 1856.

UNITED STATES SHIP PORTSMOUTH,
At sea, September 9, 1847.

SIR: In compliance with your request of the 7th instant, I send you a statement of your account, made up from October 29, 1844, to September 30, 1847, inclusive.

Very respectfully, your obedient servant,
JOHN B. TURKINGTON.

Lieut. WASH. A. BARTLETT, *U. S. Navy.*

No. 5.—*Washington A. Bartlett, Passed Midshipman and Lieutenant.*

CR.	
By pay as passed midshipman, waiting orders from October 29, 1844, to November 7, 1844, (day previous to leaving your domicil to obey your orders of October 25, 1844,) 10 days, at $600	$16 43
By pay as passed midshipman, at sea, from November 8, 1844, to November 21, 1844, 14 days, at $750	28 76
By pay as lieutenant from November 22, 1844, to December 31, 1844, 40 days, at $1,500	164 38
By pay as lieutenant from January 1, 1845, to September 30, 1847, 11 quarters, at $1,500	4,121 91
By 1,058 undrawn rations, at 20 cents each	211 60
Account in transfer balance to October 28, 1844	.....
Total credit for pay, rations, &c., from October 29, 1844, to September 30, 1847	4,543 08
DR.	
To amount of 29th allotment, at $80 per month	$2,320 00
To amount paid in money by J. H. Watmough	1,569 27
To amount by navy agent at Portsmouth, N. H	247 82
To amount by Purser Watmough in ship stores	13 79
To amount by Purser Watmough in clothing	3 83
Checked 35 months 7 days hospital fund, at 20 cents per month	7 03
Total amount of debit from October 29, 1844, to September 30, 1847	4,161 74
Balance remaining unpaid September 30, 1847, three hundred and eighty-one dollars and thirty-four cents	$381 34

Explanatory items of account from purser's books.

Date.		Items.	Amount.	Date.		Items.	Amount.
1845.				1846.			
Jan.	6	.....	$100 00	March	20	Mess bill.....	$16 70
	10	.....	119 97	April	—	...do.....	31 62
		Rations.....	11 80	May	6	Cash	15 00
		...do.....	6 20		26	Mess bill, (ball at Monterey.)	*29 72
April	1	Cash	1 00	June	2	...do.....	31 33
May	5	...do.....	10 00		2	Cash	10 00
	5	Rations.....	6 00				
June	1	...do.....	6 20				†713 76
	1	Cash	5 00				
	9	...do.....	20 00				
	25	...do.....	12 00				
July	1	...do.....	10 00			/.gent at Norfolk...	$250 00
	13	...do.....	12 00				
	22	.....	2 00				
	22	Mess bill.....	5 50			By Purs'r Watmough	$713 76
June	—	...do.....	6 00		30	Add.....	10 00
		Subscription	2 05			Postage.....	3 00
		Postage.....	1 37			Cash	10 00
Sept.	1	Cash	10 00			Subscription	3 00
	1	...do.....	5 00	1847.			
		Honolulu mess	31 30	May	27	Cash	300 00
		Seaman's Society...	2 00			Boots.....	4 25
Nov.	4	Mess bill.....	10 93	June	1	.....	35 56
	18	Mess bill.....	15 00		10	.....	27 84
	18	...do.....	7 50	Aug.	2	Cash	20 00
Dec.	8	...do.....	7 19		6	Mess	20 00
	31	...do.....	12 00		18	Cash	20 00
1846.					21	Mess	35 00
Jan.	8	Cash	10 00		31	...do	10 00
	25	...do.....	25 00	Sept.	2	Cash	25 00
Feb.	3	...do.....	50 00		15	Watson's mess account.	69 02
	3	Mess bill.....	18 75				
	20	Wine	6 50		30	Henderson's mess account.	12 86
	20	Purser, R.....	17 00				
		Cash	3 00				
March	1	Mess bill.....	11 12			Whole am't in money	1,569 29

* *To pay the expenses of a* BALL *given by all the mess* in return for civilities of the citizens, and not included in the *mess bill proper, which fully accounts for the* $30 *which Dr. Duvall states he paid at Monterey, as every member of the mess paid an equal sum to Mr. T. O. Larkin or Mr. Green, to settle the expense of the ball given by the mess to the citizens of Monterey.*

W. A. BARTLETT.

† This item account is from the purser's books, by his own clerk, to the 26th June.

W. A. B.

WASHINGTON, *May* 27, 1856.

DEAR SIR: In reply to your inquiry with regard to the "monthly ward room mess bills in the Pacific ocean and south of California," I beg to say that my experience, derived from two cruises during the years 1844 to 1845, and 1852–'53, go to prove that the expenses thus incurred ranged monthly at rates between twenty and thirty dollars, according to the localities and circumstances.

I am, very respectfully, yours,

JOHN C. CARTER, *U. S. N.*

W. A. BARTLETT, Esq., *Washington.*

WASHINGTON, *June* 12, 1856.

MY DEAR SIR: I have just received your note of yesterday relative to the amounts of my former mess bills, as a ward-room officer in the Pacific.

I consider twenty-five or thirty dollars per month as the average of my cruises throughout.

During the war, when a very different scale obtained, I was in the Gulf of Mexico.

With friendly regards, respectfully yours,

T. W. BRASHER, *Lieut. U. S. N.*

Capt. CAD. RINGGOLD, *U. S. Navy.*

BROOKLYN, *May* 16, 1856.

SIR: I have the honor to acknowledge the receipt, this moment, of a communication from the clerk of the Naval Committee, requesting my attendance to testify in the case of Mr. Bartlett. The note was addressed to New York instead of Brooklyn, hence the delay.

I do not know how I can comply with your request, unless it be transformed into a summons, as ten days since I was peremptorily ordered by the Secretary of the Treasury, at the instigation of Peter G. Washington, to leave the city, as a punishment for having advocated the passage of a bill to procure a steamer as a relief vessel upon the coast.

I am desirous of complying with your request, but am fearful of violating an order without sufficient authority to sustain me.

I take this occasion to enclose a letter from my friend, Captain McIntosh, United States navy, which I failed to deliver when at Washington.

I have the honor to be, very respectfully, your obedient servant,

ALEX. V. FRASER.

Hon. S. R. MALLORY, *United States Senate.*

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 238.

IN THE SENATE OF THE UNITED STATES.

JULY 23, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. MALLORY made the following:

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of W. R. Talbot, in behalf of himself and the other chaplains in the navy, praying increase of compensation, have had the same under consideration, and report:

The annual pay of naval chaplains, by the act of March 3, 1835, was $1,200 in sea service, and $800 waiting orders. Their duties, as ministers of religion, are prescribed by the second article of the first section of the act of 1800.

By the act of August 31, 1852, their pay was increased to $1,500 per annum on sea service, and $1,200 waiting orders, the pay of lieutenants in the navy.

Of the twenty-four chaplains there are but five doing duty at sea, and a reference to the naval registers for years past shows that there are rarely one third of the grade performing sea service.

The memorial presents no grounds which, in the judgment of your committee, call for an increase of the compensation of this grade, and they therefore recommend that the prayer of the memorialist be not granted, and that they be discharged from the further consideration of the subject.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 239.

IN THE SENATE OF THE UNITED STATES.

JULY 23, 1856.—Submitted, agreed to, and ordered to be printed.

Mr. MALLORY made the following

REPORT:

The Committee on Naval Affairs, to whom was referred the petition of William Reynolds, praying to be allowed the amount of the value of one hundred pairs of stockings, which were stolen from the storeship Fredonia, while he was acting purser and storekeeper aboard the same, have had the same under consideration, and report:

That they do not conceive the petitioner entitled to relief by Congress, and therefore recommend that the committee be discharged and the prayer of the petitioner rejected.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 240.

IN THE SENATE OF THE UNITED STATES.

JULY 23, 1856.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany Bill S. 399.]

The Committee on Military Affairs, to whom was referred the memorial of Charles McCormick, an assistant surgeon in the army, praying compensation for certain extra services, having had the same under consideration, report:

This case was favorably considered at the last session of Congress, and passed the Senate and failed in the House of Representatives for want of time. His memorial is as follows:

To the honorable the House of Representatives of the United States of America.

The undersigned begs leave respectfully to represent that he is, and has been for the last seventeen years, an assistant surgeon in the army of the United States; that during the greatest part of the period of the war with Mexico he was on duty in the city of New Orleans, Louisiana; that, in addition to the ordinary duties of an assistant surgeon, (which at such a time and such a place were *very* laborious,) he was called on to perform other duties, involving far greater pecuniary responsibility, and of a nature that rendered it next to impossible to avoid losses; that these extra duties were as follows:

Special duty as a disbursing agent of the medical department of the army at New Orleans, Louisiana; purchasing, receiving, and issuing large quantities of medicines, instruments, hospital stores, &c., for the army in Mexico, and to regiments, detachments, and companies of the regular and volunteer troops passing through New Orleans. This was a responsible duty, and involved the disbursement of a considerable sum of money.

Special duty in making disbursments under the clause "For providing for the comfort of discharged soldiers who may be landed in New Orleans, or other places within the United States, so disabled by disease or wounds, received in the service, as to be unable to proceed to their homes, and for forwarding destitute soldiers to their homes, five

hundred thousand dollars; said sum to be applied and expended under the direction of the Secretary of War."—In the act of Congress making appropriations for the support of the army and volunteers for the year ending June 30, 1848, and for other purposes, approved March 2, 1847.

This was a most perplexing and responsible duty, it crowded my office almost constantly with applicants for relief.

Joining this to the other numerous duties I had to perform, all requiring my own especial attention, it caused me to be almost constantly surrounded by hurry, bustle, and confusion; thus rendering it almost a matter of necessity that I should sustain losses. I will give a single instance as an example. Not long since I received a letter giving accurate information (as if it had been copied from my own books) of a discharged soldier whom I had relieved and sent to his home, thus expending fifty or sixty dollars; and yet on examining my public accounts, I could not find that any such charge had been made against the United States, thus I sustained a clear loss of about fifty-five dollars. Such cases doubtless often happened in consequence of the excessive duties crowded upon me, and the great hurry, bustle, and confusion in which I was compelled to discharge them.

Under this act, also, I had to purchase and issue in detail large quantities of clothing to men under all circumstances—sick, dying, and often dead men, to have them decently buried. For this duty *alone*, discharged to men of one company only, captains in the army are allowed ten dollars per month. I issued clothing to men of nearly every regiment and company, both volunteer and regular in service, and under circumstances where the clothing responsibility was more than a hundred fold greater.

I had also pecuniary responsibility and some small loss in making out the final statements of great numbers of invalid soldiers discharged in the city of New Orleans.

Under an act of Congress all paymasters in the army were allowed a per centage for payments made to volunteers.—(See act of Congress approved August 12, 1848.) Inasmuch, therefore, as Congress in allowing ten dollars per month to captains of companies for clothing responsibility, and a per centage to all paymasters for payments to volunteers, has thought it just and proper to make such allowances to officers of the army for responsible and extra duties, to cover unavoidable losses, and as I have sustained some loss and performed for two or three years arduous extra duties, as above enumerated, I therefore respectfully pray Congress may allow me a two and a half per centage on the amount of public money disbursed by me under the act approved March 2, 1847.

CHARLES McCORMICK.

In 1851, in answer to a communication from this committee, the surgeon general writes as follows:

SURGEON GENERAL'S OFFICE, *January* 31, 1851.

SIR: Your communication of the 28th instant, enclosing to me a memorial from Assistant Surgeon Charles McCormick, of the United States army, and asking my opinion upon the merits of the petition I have had the honor to receive—

The memorial sets forth that, in addition to a full measure of duty in his own proper department, Doctor McCormick was called on to disburse the money appropriated by the act of Congress approved the 2d of March, 1847, "providing for the comfort of discharged soldiers who may be landed at New Orleans, or other places in the United States," &c., &c., and he asks that, in consideration of the extra labor performed, and the heavy responsibilities assumed, an allowance of —— per centum be made to him, in the final settlement of his accounts at the treasury, out of the balance of the appropriation remaining on hand.

Upon the subject matter of this memorial I beg leave to submit the following remarks:

Assistant Surgeon McCormick was, in 1846, stationed in the city of New Orleans to act as medical purveyor, the duties of which office were not only to receive and keep in depot a large amount of medical stores from New York for reissue, but also to purchase medical supplies at New Orleans, and forward them upon special requisitions to the different army corps employed on the theatre of war.

In addition to these duties as medical purveyor, he had necessarily to give his professional services to the officers, soldiers, and government employees, stationary and transient in New Orleans, the whole giving as full employment as could justly be required from one individual. While thus engaged in the discharge of his legitimate functions, Doctor McCormick was called upon by General George M. Brooke, the military commander at New Orleans, to give his attention to the numerous invalided discharged soldiers arriving in New Orleans from Mexico and other places, and to disburse the money appropriated for their benefit.

The business of collecting together and providing for the discharged soldiers coming in from various divisions of the army was altogether extraneous or foreign to his legitimate duties, a service over and above what could have been legally exacted or reasonably required of him, without the prospect of remuneration for extraordinary responsibility and actual loss sustained in the disbursement of the money entrusted to his care and management.

By an extraordinary effort of mind and of body, involving much labor by day and by night, however, Doctor McCormick accomplished all that was required of him, and, as far as I can learn, to the satisfaction of all concerned.

Having witnessed, during a portion of the time, his active and untiring devotion to the relief of all who came within the provisions of the act of Congress above cited, I can speak understandingly of the nature and extent of the duties which were thrown upon Doctor McCormick; and I am free to say, that, if remuneration for extra labor performed, heavy responsibility assumed, or actual loss sus-

tained, can in any instance be accorded to a public agent, the prayer of the memorialist is entitled to the most favorable consideration.

With sentiments of very high respect, I am, your obedient servant,

THOMAS LAWSON,
Surgeon General.

Hon. JAMES SHIELDS,
United States Senate.

The committee have examined this claim with a good deal of care, and can see no reason for a change of the opinions heretofore expressed in relation to it; but, on the contrary, as Congress has several times accorded extra compensation for extraordinary labor and responsibility, they with greater confidence report a bill for Dr. McCormick's relief, and recommend its passage. The amount disbursed by the memorialist is $280,522 26, and he is said to have sustained many losses in doing so.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 241.

IN THE SENATE OF THE UNITED STATES.

JULY 23, 1856.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 400.]

The Committee on Naval Affairs, to whom was referred the petition of William Heine, praying compensation for services as an artist in the Japan expedition, have had the same under consideration, and report:

That it appears in evidence that William Heine entered and served as a master's mate, under Commodore Perry, on the "Japan expedition," from August 1, 1852, to April 25, 1855; that, while thus employed, he performed the duties of *artist* to the expedition, and in that capacity prepared very many of the illustrations of the report of said work, called for by Congress. During the whole of his service in the capacity of master's mate, as appears from the papers filed herewith from Commodore Perry and Lieutenant Maury, he "was exclusively employed as the principal artist of the expedition, in which capacity he evinced superior talents, and elicited the entire approbation of the commander of the expedition;" and, since his return to the United States, has been "of great service to the hydrographical work of the expedition, in sketching headlands, topography," &c., and in drawing and superintending the publication of the illustrations to the report on the same.

Your committee are therefore of opinion that Mr. Heine is justly and equitably entitled to a greater remuneration than that of a master's mate, at which he was rated, and herewith report a bill, allowing him the sum of $3 per day, during the time he acted as artist to the said expedition, deducting therefrom the amount already received by him as master's mate, and recommend its passage.

The committee herewith append the certificates of Commodore Perry and Lieutenant William L. Maury.

NEW YORK, *June* 23, 1856.

This will certify that Mr. William Heine served under my command in the United States naval expedition to Japan from the 1st of August, 1852, until the 25th of April, 1855, inclusive, and has been further employed up to this date in the public service as artist in the preparation of the illustrations of the report called for by Congress.

Mr. Heine was rated a master's mate in the navy, but was exclusively employed as the principal artist of the expedition, in which capacity he evinced superior talents, and elicited my entire satisfaction.

M. C. PERRY.

—

NEW YORK, *April* 16, 1856.

Mr. William Heine was of great service to the hydrographical work of the Japan expedition, in sketching headlands, topography, &c., and since the return of the expedition he was associated with me for some months in drawing and superintending the publication of the illustrations to Commodore Perry's report.

WM. L. MAURY, *Lieut. U. S. Navy.*

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 242.

IN THE SENATE OF THE UNITED STATES.

JULY 23, 1856.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Joint Resolution S. 32.]

The Committee on Naval Affairs, to whom was referred the petition of Lieutenant Wm. F. Lovell, United States navy, praying that the same additional compensation may be paid to the officers and seamen who accompanied the expedition in search of Dr. Kane as was allowed to those who accompanied the expedition under Lieutenant De Haven, have had the same under consideration, and report:

That they deem the petitioners justly entitled to the extra compensation prayed for, the same having been already granted by Congress to their predecessors for similar hazardous and perilous services, and they report a joint resolution herewith and recommend its passage.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 243.

IN THE SENATE OF THE UNITED STATES.

JULY 23, 1856.—Ordered to be printed.

Mr. TOOMBS made the following

REPORT.

[To accompany Bill S. 401.]

The Committee on Indian Affairs, to whom was referred the memorial of the heirs of Robert McConnell, deceased, late of Alabama, have had the same under consideration, and report:

That it appears from two affidavits, regular on their face, that Robert McConnell was killed at the massacre of Fort Mims in the month of August, 1813. That he was possessed of a negro slave and other personal property, amounting in value to the sum of one thousand dollars; that said slave was engaged in working on Fort Mims when his master was killed, and he and the other personal property were forcibly taken and carried away by the Indians, and that the heirs of the said McConnell have never recovered, or been compensated for the loss of, said property.

It also appears that at the capitulation of Fort Jackson in 1814 it was demanded and stipulated by the United States that the Indians should restore to their lawful owners "all the persons and property taken from the citizens of the United States, the friendly part of the Creek nation, the Cherokee, Chickasaw, and Choctaw nations." The government has indemnified the friendly Creek Indians by a large appropriation for the non-performance of this article of capitulation, and your committee think, rightfully; the same principle demands the same indemnity for the petitioners, unless it be held that this government are under higher obligations to cause justice to be done to the Indians than to her own citizens.

Your committee therefore report back the bill with the recommendation that it do pass.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 244.

IN THE SENATE OF THE UNITED STATES.

JULY 23, 1856.—Ordered to be printed.

Mr. TOOMBS made the following

REPORT.

[To accompany Bill S. 81.]

The Committee on Indian Affairs, to whom were referred the bill (S. 81) to provide for the examination and payment of certain claims of citizens of Georgia and Alabama on account of losses sustained by depredations of the Creek Indians, have had the same under consideration, and report:

That a bill having the same object was referred to your committee the first session of the thirty-third Congress, and was then fully and carefully examined, and was reported back to the Senate, with a recommendation in favor of its passage. Your committee fully adopt the report then made, and herewith annex a copy of it, and report back the bill, with the same recommendation.

IN SENATE—*April* 20, 1854.

The Committee on Indian Affairs, to whom was referred Senate bill No. 53, *entitled "A bill to authorize the payment of certain claims for depredations and spoliations during the hostilities with the Creek and Seminole Indians in* 1836 *and* 1837," *have had the same under consideration, and report:*

That in the year 1852 the United States made a treaty with the Creek Indians, by which they ceded all their lands lying east of the Mississippi, reserving to each head of a family a specified quantity of land, who was entitled to hold the reservation in fee simple, independent of the tribe. These lands were situated wholly in the State of Alabama. It was stipulated in the treaty that the owners of these reservations might occupy or sell them at their pleasure, the contracts of sale being subject to approval by the government, to prevent imposition upon the Indians. While the Indians were not obliged by the treaty to emigrate, but might remain in Alabama if they chose to do so, the United States set apart and guarantied to them a large tract of country west of the Mississippi river. After the ratification of the treaty, and immediately after the surveys were made and the reservations were set apart to them, the Indians commenced selling them out

to citizens of the United States, under the sanction and approval, and even encouragement of the government, until in the spring of 1836 scarcely an Indian owned a single acre of land in the ceded country. The government, also, immediately after the completion of the surveys, put all the balance of the lands ceded to it by the Indians into market, and great numbers of citizens bought homes and settled in the ceded country in the midst of the Indians. The Indians having sold out their lands and squandered the proceeds, were left houseless and homeless, wanderers and outcasts, and in utter destitution. In the spring of 1836 the whole tribe were in a state of starvation, and began first by stealing, then by begging, and finally by intimidation and force, to extort a subsistence from the persons who had settled in the ceded country under purchases of land from themselves and from the government. There being no government troops stationed in the country, and the settlements being still sparse and inadequate for mutual protection, and the authority of the tribe being wholly inadequate to control or restrain the starving Indians, after the perpetration of numerous murders by them privately, it was deemed unsafe to reside in the ceded country, and almost the whole population abandoned their homes, left such of their property as could not be carried away in a hasty flight, and sought safety in Georgia and the old settlements of Alabama.

After the whites abandoned their homes, marauding parties of the Indians continued to devastate the Indian country, and made occasional inroads across the Chatahoochee river into the neighboring settlements of Georgia, murdered many of the inhabitants, and destroyed and carried away much of their property. Upon information of these events, the governors of Georgia and Alabama immediately called into service a large body of volunteers, and marched them into the disturbed district; and the government of the United States ordered troops and its own officers to Alabama to suppress these outrages. General Jessup having been ordered to Alabama by the general government, immediately upon his arrival in the country, accepted the services of from 1,300 to 1,500 friendly Indians, to aid in suppressing the outbreak, and, being without the means of support, they joined in the general plunder, and were subsisted upon the property of the unfortunate citizens. It is clearly proven, by the evidence of the commanding officer of the Indians, (Colonel Hogan,) that this band of Creeks, in the service of the United States, marched through the ceded country, slaughtered the cattle and hogs belonging to the settlers, and seized and consumed whatever remnant of corn, bacon, and other provisions of the inhabitants, had escaped the ravages of those whom they called the hostile Indians, and thus the ruin of the unfortunate inhabitants, begun by lawless enemies, was consummated by pretended friends, under the sanction of the flag of their own country. It is proven by the testimony of Colonel John B. Hogan, an agent of the government, and "acting adjutant and inspector general of a brigade of Indians, under the chief Opoth-le-Yoholo," that he raised from 1,300 to 1,500 Indians under that chief, at the instance of Governor Clay and General Jessup; marched them into the disturbed district, and was "ordered by General Jessup to

subsist the force in the best manner (he) could, and (he) had forage parties out every day hunting up corn, fodder, and beef." He further states, "that as soon as the Indians would drive up a gang of cows, calves, or oxen, before I was aware of their being in any part of my camp, (which was very extensive, having from 1,300 to 1,500 Indians scattered all over the hills about Big Springs,) those Indians that were most in want of provisions would commence shooting them down. In this way an immense number of cattle were destroyed, and a great many more than were required for the actual subsistence of the whole army. No effort of mine, and of the white persons who were with me, and who acted as officers among the Indians, could prevent the abuse that took place in the destruction of cattle."

These facts are abundantly sustained by other unquestionable testimony, leaving no doubt but that the government supported its own troops by an indiscriminate plunder of the property of the citizens it was bound to protect. It further appears, that as soon as volunteer troops could be collected from Georgia and Alabama in sufficient numbers to repress the outrage and punish the aggressors, nearly all of the Indians, who had been engaged in these depredations, came in and surrendered to the officers of the United States, received rations, and were protected by them, and emigrated to their homes west of the Mississippi river; and so far from demanding indemnity from them for their spoliations, which it was perfectly in its power to obtain, the government of the United States have continued to pay them large annual annuities, and occasionally made large grants of money to them under different pretences, wrung, in due proportion, from the hard earnings of these plundered citizens. A few straggling parties only of these Indians refused to emigrate, and attempted to make their way through Georgia to the hostile Seminoles in Florida; they were pursued by the Georgia troops, and those of them who escaped being killed in battle succeeded in this effort; other small parties concealed themselves in the swamps and other secure places in the ceded country, and subsequently to the general emigration recommenced their depredations, but were speedily met, defeated, and subdued by the Alabama volunteers, commanded by General Wellborn.

It is perfectly clear that these spoliations were not committed under any authority from the Creek Nation of Indians, but they were the lawless acts of roving bands of Indians seeking plunder. No action was fought with them in Alabama, where the tribe resided, except with the small parties who concealed themselves and remained after the body of the nation had removed; and none in Georgia with the other small parties, who were overtaken by the Georgia militia, in their plundering excursions, or in their attempts to get into Florida. Therefore, the whole of the spoliations committed fall clearly within the principle of the various intercourse acts passed by Congress, by which this government has bound itself to compel the Indians to pay for such outrages, or to indemnify the citizens for them out of the public treasury. Thus far the government have done neither the one nor the other. Compensation for that portion of the spoliations committed by Indians in the service of the United States, and by the orders of its officers, is demanded under the plain letter and meaning of the Constitution, which fully sus-

tains that demand: that Constitution declares that private property shall not be taken for public use without just compensation.

Immediate notice was given of these depredations to the government, and earnest appeals were made to it by the sufferers for indemnity; and Congress, on the second day of March, 1837, passed an act authorizing the President of the United States to appoint three commissioners to inquire into and report the amount and nature of these spoliations. They were appointed, entered upon the discharge of their duties, visited the Creek country, heard evidence on each claim, and, after a severe scrutiny of the claims, rejecting all demands for consequential damages, reported the actual value of the property taken or destroyed by the Indians, together with all the attendant circumstances. This report was submitted to Congress by the President on the 27th of January, 1838, and embraces all the claims for which payment is sought and provided for by the bill referred to your committee. The claimants have continued from time to time to urge the consideration and payment of their claims by Congress, but hitherto in vain.

Your committee are not aware of any objections having been urged against the accuracy of the claims or the mode of ascertaining them, except by the injured parties, who complain that consequential damages ought to have been allowed, and that the commissioners undervalued the property taken and destroyed by the Indians. The only objection to their payment which seems heretofore to have been urged is, that these depredations were committed by the public enemy in public war, and that therefore the government is not bound to indemnify the citizens for them. The first and sufficient answer to this objection is, that if the rule be a sound one, the facts do not warrant its application to these claims. The soundness of the rule itself is open to grave objections. It is against principle, and the authorities upon it are conflicting. The sound and fundamental general principle of the social system is that each member of society "shall only bear his quota" of the public burdens or public calamities either in peace or war. It being the duty of society to protect all of its members, even when the State is really unable to perform this duty, it violates the principle upon which it is based of natural equity, not compel each member of the State to bear his equal proportion of injuries committed against any one member even by the public enemy. Grotius says, that the publicists are divided on the question, and Vattel, who seems to relieve society from the absolute obligation, puts it mainly on the ground that a different rule would soon "exhaust the public finances," but he fully admits its strict justice and conformity to natural equity. He says, "it is perfectly consonant to the duties of the State and sovereign, and of course perfectly equitable, and even strictly just, to relieve, as far as possible, those unhappy sufferers who have been ruined by the ravages of war, as likewise to take care of the family of those whose head and support has lost his life in the service of the State. There are many debts which are considered as sacred by the man who knows his duty, although they do not afford any ground of action against him." But if this rule is sound, it is not universal. Even if this was public war, waged by public authority on both sides, one of its legitimate objects on one side was to secure the expenses to the government and the

losses to the citizens of conducting it. Vattel says, "who ever uses a citizen ill, indirectly offends the State which is bound to protect this citizen; and the sovereign of the latter should avenge his wrongs, punish the aggressor, and, if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is safety." All publicists admit, that it is not just, but that it is the duty of the conqueror to compel the enemy to repair the wrongs which his own injustice has occasioned. This government has almost uniformly acted upon this principle, even in its public wars with the Indian tribes on this continent. Stipulations for indemnity for injuries committed in war are to be found scattered through all the Indian treaties of peace. Such provisions are to be found in all the treaties made with the Creek Indians, from the treaty of Augusta, in 1783, down to the treaty of Indian Springs, in 1821, establishing the fact that the government has uniformly demanded of the Indians indemnity for spoliations committed in actual public war, in her treaties of peace, and has compelled the Indians to pay for other spoliations committed by the tribes not in public war, or undertaken herself to pay them in her various laws regulating intercourse with the Indians; therefore, by the laws of nations, the uniform policy of the government exhibited in its Indian treaties, these claimants would be entitled to indemnity even if these spoliations had been committed in a public war. But in this case there was no treaty of peace, for the reason that there was no public war by the nation.

But public war can only exist by authority of the sovereign power. The evidence is full and conclusive that neither the sovereign power of the Creek nation nor any other public authority of that nation authorized war against the United States or of its citizens at this time. On the contrary, the nation opposed it, and its head chief, Opath-le-Yo-ho-lo, and fifteen hundred warriors enlisted in the service of the United States to suppress this lawless violence and to punish the perpetrators. The spoliations for which redress is now sought were caused by "predatory expeditions, undertaken without lawful authority and without cause, as likewise without the usual formalities, and solely with the view to plunder," and is therefore excepted by Vattel and all the approved publicists from the principles under which redress is here sought to be derived, and brings it within the principle under which, by the practice of all civilized nations, the citizen or subject has been held entitled to indemnity, and under which this government has uniformly extended redress. Your committee, therefore, unanimously recommend the passage of the bill, which is herewith reported back to the Senate.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 245.

IN THE SENATE OF THE UNITED STATES.

JULY 25, 1856.—Ordered to be printed.

Mr. WADE submitted the following

REPORT.

[To accompany Bill S. 407.]

The Committee of Claims, to whom was referred the report of the Court of Claims in favor of the claim of Francis A. Gibbons and Francis X. Kelly, report:

Upon a review of this case, the committee concur in the opinions of the court, which are hereto annexed as a part of this report; and recommend the passage of the accompanying bill, submitted by said court.

GIBBONS & KELLY *vs.* THE UNITED STATES.

The following opinion, in the case of Gibbons & Kelly *vs.* The United States, was delivered by Judge Scarburgh, of the Court of Claims, January 8, 1856:

By the act of Congress, approved September 28, 1850, entitled "An act making appropriations for light-houses, light-boats, buoys, &c., and providing for the erection and establishment of the same, and for other purposes," it was enacted "that the following appropriations be, and the same are hereby, made, and directed to be paid out of any money in the treasury not otherwise appropriated, to enable the Secretary of the Treasury to carry the provisions of this act into effect."—(9 Stat. at Large, 500.) Amongst the appropriations therein mentioned are the following:

"*In California.*—For a light-house at Alcatraz island; for a light-house at Point Conception, and a fog-signal; for a light-house on Battery Point, entrance of the bay of San Francisco; for a light-house at San Diego; for a light-house and fog-signal at Monterey; for a light-house at the island of Faralones, off the harbor of San Francisco, and a fog-signal, and for the transportation, erection, and placing the same, ninety thousand dollars.

"*In Oregon.*—For a light-house on Cape Disappointment, at the mouth of the Columbia river; one on an island off Cape Flattery, at the entrance of the straits of Fuca, and one at new Dungenness; twelve iron can-buoys in Columbia river, and the transportation, erection, and placing the same, fifty-three thousand one hundred and forty dollars."—(Ibid, 503.)

By a similar statute, with the same title, approved March 3, 1851, the following appropriations were made:

"*Oregon.*—For a light-house and fog-signal at Umpqua, fifteen thousand dollars; for fog-signals for the light-houses at Cape Disappointment, Cape Flattery, and New Dungenness, three thousand dollars.

"*California.*—For a light-house at Humboldt harbor, fifteen thousand dollars."—(Ibid, 628.)

On the 30th day of April, A. D. 1852, a contract was made between the petitioners, of the first part, and the Secretary of the Treasury, for and on behalf of the United States, of the second part. It recited as follows: "*Whereas*, by an act of Congress, approved September 28, 1850, there was appropriated for a light-house at Alcatraz island; for a light-house at Point Conception and a fog-signal; for a light-house at Battery Point, entrance of the bay of San Francisco; for a light-house at San Diego; for a light-house and fog-signal at Monterey; for a light-house at Faralones, off the harbor of San Francisco, and a fog-signal, in the State of California, and for the transportation, erection, and placing the same, the sum of ninety thousand dollars; and by the act of 3d March, 1851, for a light-house at Humboldt harbor, in said State of California, the sum of fifteen thousand dollars; and by both of said acts for a light-house and fog-signal at Cape Disappointment, in the Territory of Oregon, appropriations were also made.

"*And whereas* the said parties of the first part have undertaken, and hereby agree and contract to erect the said several light-house structures above mentioned, at the several points already indicated, or to be indicated, as the sites thereof, by the officers of the Coast Survey, of either brick or stone, as *they* may elect, upon the plans and according to the printed specifications hereto attached, except that the best quality of lime and sand mortar may be substituted for cement, and in the structure to be erected at Cape Disappointment the tower to be detached from the keeper's dwelling, as recommended by the report of Lieutenant A. M. Harrison; and that the heaviest description of tin, prepared and painted in the best mode, be substituted for slate in the construction of the roofs of the several structures, and to finish and complete the same on or before the first day of November, 1853."

Then follow covenants by the petitioners for the fitting up of the illuminating apparatus, the particulars of which it is not necessary now to mention. The contract contains the following additional stipulations:

"And it is understood and agreed that the party of the second part is to have the privilege of furnishing any or all of said light-houses with the French lens, instead of the apparatus hereinbefore described, at the proper cost and charges of the United States, and that in such case the parties of the first part will deduct from the gross sum of this contract the cost of the lighting apparatus herein stipulated to be furnished by them; and it is further agreed that the party of the second part may, at his option, dispense with the erection of the several fog-signals hereinbefore mentioned, and that in such an event the cost of them is to be deducted from the gross amount of this contract. And the said Thomas Corwin, Secretary of the Treasury, as aforesaid, for and on behalf of the United States, as aforesaid, agrees and stipulates

that upon the completion of the said several structures according to the subjoined plans and specifications, with the exceptions indicated, and upon the delivery and setting up of the lighting apparatus according to the terms of this agreement, and the inspection and approval thereof by the collector of the district in which any of the said structures may be situated, or other authorized agent of the Treasury Department, to be appointed by the Secretary of the Treasury, he, the said party of the second part, will cause to be paid to the said parties of the first part, or their assigns, the sum of one hundred and thirty-six thousand dollars. And the said party of the second part, for and on behalf of the United States, further agrees and stipulates that, upon the completion as aforesaid of each or any one or more of said structures according to the agreement, the sum of fifteen thousand dollars is to be paid for each of those on the coast of California, and thirty-one thousand for that in Oregon, with a reservation of twenty per cent. on the Oregon light-house, unless it be the last one completed.

"And it is further agreed between the parties to this contract that, in consideration of the advances of money to be made by the parties of the first part for the illuminating apparatus and other materials for the said several light-houses to be sent from Atlantic ports, as soon as the said illuminating apparatus, lantern fixtures, fog-signals, oil vessels, and tin are shipped and insured, and the policy of insurance is assigned and delivered, accompanied by a duplicate of the bill of lading to the said party of the second part, and upon the execution and delivery of a penal bond in the sum of seventy-five thousand dollars, with security, to the satisfaction and approval of the said party of the second part, conditioned for the faithful execution of this contract on the part of the said parties of the first part, he, the said party of the second part, will thereupon pay and advance to the said parties of the first part, or their order, the sum of thirty-five thousand dollars; and the said party of the second part further agrees and stipulates that, in case a revenue cutter, or other public vessel of the United States, should be proceeding to the Pacific coast at or about the time said above named illuminating apparatus, lantern fixtures, fog-signals, oil vessels, and tin, together with the entire wood-work of said several light-houses, except the joists and rafters, are ready for shipment, the same will be taken on board of said vessel and delivered to the collector of San Francisco free of charge to the said parties of the first part; and in the event that no such vessel is sent as aforesaid, that then, and in that case, the said party of the second part will be bound to otherwise transport the said articles by other vessel or vessels free of freight to San Francisco, provided the entire freight on the wood-work does not exceed two thousand five hundred dollars, exclusive of the freight on the other articles; and provided, further, that in case the said articles are transported by the parties of the first part, the party of the second part will pay therefor, upon the production to him of the evidences of such shipment as hereinbefore mentioned, the usual and customary cost of the freight thereof.

"And it is further agreed and stipulated that the said articles so to be shipped as aforesaid are not to be delivered to the said parties of the first part at San Francisco, but the same are to remain in the pos-

session of the collector until delivered at the several points where the same are to be used, and to which several places they are to be transported under the authority of said collector, when required by the said parties of the first part, in a revenue cutter of the United States, or other vessel; the said parties of the first part being also required to send therewith in said cutter a competent artisan and a sufficient number of workmen to place said apparatus and fixtures without unnecessary delay in the several towers erected for their reception. It is to be understood, however, that, in case the said parties of the first part shall prefer to ship the said illuminating apparatus, lantern, fixtures, fog-signals, wood-work, and other accessories, or any other part thereof, directly to the several points, and place the same in the several structures without going to San Francisco, they, the said parties of the first part, shall have the right and privilege to do so.

"It is further understood that the advance payment of thirty-five thousand dollars herein provided for is to be deducted from the specific payments upon each light-house, as the same are respectively finished, in a *pro rata* proportion—that is to say, three thousand eight hundred and sixty dollars of the said advance payment are to be deducted from the price of each of the several light-houses in California, and the sum of seven thousand nine hundred and eighty dollars from the price of that in Oregon."

This contract was subsequently modified in certain respects, which need not for the present be particularly noticed.

The petitioners allege "that the Acting Secretary of the Treasury required them to assign, and they did assign to the government, by way of indemnity for the advance or pre-payment of the sum of $35,000 on their said contract, the policies of insurance and bills of lading, not only for the fixtures, oil-vessels, tin, and all the wood-work, except the joists and rafters, but for all and every material shipped by your petitioners for California, and designed for use in the construction of said light-houses." They further allege "that said goods were transported at the expense of the government in the barque Oriole to San Francisco, and there delivered to the collector of customs of that port." These allegations, at the present stage of this cause, must be taken to be true.

By the act of Congress approved August, 31, A. D. 1852, with the same title as the act first above mentioned, approved September 28, A. D. 1850, the following appropriation was made: "For the completion of light-houses in California and Oregon, one hundred and twenty thousand dollars.—(10 Stat. at Large, 118.)

On the eighth day of February, A. D. eighteen hundred and fifty-three, a charter party was entered into between the petitioners, owners of the barque Oriole, of the first part, and Beverly C. Sanders, collector of the port of San Francisco, acting on behalf of the government of the United States, of the second part. It contains the following stipulations: "That the said parties of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, do covenant and agree, on the freighting and chartering of the said vessel to the said party of the second part, for the conveyance of mate-

rials for light-houses to Monterey, Point Conception, San Diego, the Faralones, Humboldt bay, the mouth of Columbia river, and such other points as may be designated by the said party of the second part, or by the duly authorized agent of the United States government, on the terms following—that is to say:

"First. The parties of the first part do engage that the said vessel, in and during the time that she shall be thus employed, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such service.

"Second. The said parties of the first part do engage further to convey and provision such agents of the government, and such artizans and operatives as may be necessary, to be transported with the materials for the purpose of erecting the light-houses to be constructed.

"Third. The said parties of the first part do engage further to take and receive on board said vessel, during the continuance of this charter, all such materials as may be shipped by the party of the second part, or the duly authorized agents of the United States government.

"Fourth. The said parties of the first part do engage further to land and deliver the materials, operatives, and artizans aforesaid, at the points which may be selected as the sites for the light-houses by the duly authorized agents of the United States government.

"Fifth. The said parties of the first part do engage further that this charter party is to continue until the whole of the materials are transported to the sites where the light-houses are to be erected, and is to terminate as soon as all the materials are delivered in pursuance of its requirements: *Provided, however*, That this charter shall be approved by the Secretary of the Treasury; and if it shall not be approved by the said Secretary, then it shall cease and terminate on the day when notice of the disapproval of the said Secretary shall be received by the said parties of the first part, or either of them, or on such day as the said Secretary shall designate after the receipt of the notice by the parties of the first part.

"And the said party of the second part, on behalf of the United States government, for and in consideration of the covenants and agreements to be kept and performed by the said parties of the first part, does covenant and agree with the said parties of the first part to charter and hire the said vessel as aforesaid, and to pay to the said parties of the first part, or their agents, for the charter or freight of the said vessel during the time the said vessel may be engaged under this charter, the sum of three thousand dollars for each and every month, payable monthly at the end of each and every month; it being understood and agreed upon that this charter shall commence from the day of the date hereof."

Before this charter party was made, the petitioners "performed, at their own cost, the transportation for the two light-houses on Battery Point and Alcatraz island." Afterwards they "proceeded under the charter party and performed the transportation for the light-houses at Monterey and Faralones, and on the way to Cape Disappointment said vessel was wrecked, and the materials on board, being principally those of four light-houses, totally lost."

In the early part of the first session of the thirty-third Congress, the petitioners presented a memorial to the Senate of the United States. It was referred to the Committee of Claims, who made a report. They also submitted an estimate of the amount of an appropriation, supposed to be necessary to meet their claims, to the Secretary of the Treasury, who communicated it to Congress, and by the act of the 4th of August, A. D. 1854, the following appropriation was made: "For completing the light-houses on the coast of California and Oregon, the sum of $59,434: *Provided,* That it shall be the duty of the Secretary of the Treasury to pay the contractors for building the light-house on Point Loma, near San Diego, what the same is reasonably worth." The sum thus appropriated was the exact amount of the estimate submitted by the petitioners. The caption of this estimate was as follows: "*Memorandum of amounts due Gibbons and Kelly for light-house structures, transportation, &c., in California and Oregon;*" and it contained, amongst others, the following items: (a) "Loss of materials assigned to government by wreck of barque Oriole, $10,558." (b) "Paid eighteen hands for fifty days' time, board, passage back to San Francisco, occasioned by loss of barque Oriole, $4,390."

On the 10th day of January, A. D. 1855, the Senate adopted the following resolution:

"*Resolved,* That the Secretary of the Treasury furnish the Senate with all the original papers, including the report of the Commissioner of Customs, in relation to the claim of Gibbons and Kelly, the contractors for building the light-houses in Oregon and California, for the balance which they state is due them; and that he also report to the Senate the amount he has paid said contractors out of the appropriation of $59,434 made at the last session of Congress to pay said claim, and how much of said appropriation remains unexpended."

The petitioners claim that the United States are liable to them—

1. For the value of the goods lost in the Oriole; and

2. For the consequential damages claimed by them in their estimate above mentioned.

The petition embraces other items; but the argument which has been submitted related chiefly to these two. We deem it necessary now only to consider the former.

1. Are, then, the United States liable to the petitioners for the value of the goods lost in the Oriole?

This question involves the necessity of determining the proper construction as well of the original contract as of the charter party.

We will first consider the original contract. Appropriations had been made by acts af Congress, as we have seen, for the erection of several light-houses in California and Oregon, and the object of this contract was to carry those acts into execution. The petitioners undertook to construct the light-houses; but the work to be done before the materials were actually put into the several structures was undertaken in part by the United States, and in part by the petitioners. It was deemed expedient that the necessary materials should be procured in the Atlantic States, transported thence to San Francisco, and there delivered to the collector of that port. The duty of procuring the materials and shipping them was undertaken by the petitioners. A pay-

ment in advance was to be made by the United States to the petitioners for the illuminating apparatus and other materials for the light-houses to be sent from Atlantic ports. The language of the contract upon this point is, "that in consideration of the advances of money to be made by the parties of the first part for the illuminating apparatus and other materials for the said several light-houses to be sent from Atlantic ports, that," &c. This payment in advance was to be made as soon as the illuminating apparatus, lantern, fixtures, fog-signals, oil vessels, and tins should be shipped and insured, and the policy of insurance, accompanied by a duplicate of the bill of lading, assigned and delivered to the United States, and upon the execution and delivery of the penal bond required by the contract. After the delivery of the materials to the collector of the port of San Francisco, they were to remain in his possession until the petitioners should require them to be transported to the several places where they were to be used, when they were to be transported to those points under his authority in a revenue cutter of the United States, or other vessel. Such was the original contract, so far as it bears directly upon the point now under consideration.

The petitioners insist that, under the proper construction of this contract, upon the assignment of the policy of insurance and the bill of lading to the United States, they became the owners of the materials embraced by those instruments. In considering the legal effect and operation of the contract with reference to this point, it is proper to view it in connexion with the first section of the act of Congress of January 31, A. D. 1823, (3 Stat. at Large, 723,) which is as follows: "No advance of money shall be made in any case whatever; but in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment: *Provided*, That it shall be lawful, under the special direction of the President of the United States, to make such advances to the disbursing officers of the government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfilment of the public engagements: *And provided also*, That the President of the United States may direct such advances as he may deem necessary and proper to such persons in the military and naval service as may be employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected." This case, it is obvious, does not fall within either of the exceptions in the statute, because the petitioners were neither disbursing officers of the government nor persons employed in the military or naval service of the United States; but the general enactment has a direct application to it. The contract was doubtless made with reference to the statute, and hence we find that it particularly specifies *when* and *for what* the payment in advance was to be made.

The statute forbids *advances* of public money in *all* cases; but in cases of contracts for the performance of any service, or the delivery of articles of any description for the use of the United States, it allows *payment* to be made not exceeding the value of the service rendered,

or of the articles delivered previously to such payment. An advance of money on contract, strictly speaking, is a payment made before an equivalent is received. It is such an advance that is forbidden by this statute. It distinguishes, it will be observed, between an advance and a payment. The payment which it contemplates is a payment for a full equivalent received, as contradistinguished from a payment or an equivalent expected. The former it allows; the latter it forbids. It prescribes three requisites to constitute a valid payment: first, that it be a payment in the sense of the statute; second, that it be made in a case of contract for the performance of some service, or the delivery of articles of some description for the use of the United States; and third, that it shall not exceed the value of the service rendered, or of the articles delivered previously to such payment.

In the construction of the contract now under consideration, we must presume, as already indicated, that the parties not only had this law in contemplation, but meant to conform to it. If, therefore, it be susceptible of two constructions, one consistent, and the other inconsistent, with the statute, the former construction must be adopted. "It is a general rule," saith Lord Coke, "that whensoever the words of a deed, or of the parties without deed, may have a double intendment, and the one standeth with law and right, and the other is wrongful and against law, the intendment that standeth with law shall be taken."—1 Coke upon Litt., 620, (Thomas's Ed.) In Shore *vs.* Wilson, 9 Cl. and Fin., 397, Lord Lyndhurst said: "The rule is this, and it is a fair and proper rule, that where a construction, consistent with lawful conduct and lawful intention, can be placed upon the words and acts of parties, you are to do so, and not unnecessarily to put upon these words and acts a construction directly at variance with what the law prohibits or enjoins." This doctrine is so manifestly in accordance with the dictates of justice and of common sense that a further citation of authority in support of it cannot be necessary. But the fair and natural construction of the contract in this case—that which is suggested by the proper signification of the language employed—is entirely consistent with the requirements of the statute. (1.) The payment provided for in it is precisely the kind of payment contemplated by the statute. It was called a payment in the contract. In one part of the contract it is spoken of as "advances to be made," but the direct stipulation to make it is "will thereupon *pay* and advance." But what essentially characterizes it as a payment authorized by the statute is, that it was not to be made until after the equivalent was received by the United States. (2.) It was made for services rendered and articles delivered for the use of the United States; for it was not to be made until after the bill of landing and policy of insurance were assigned and delivered to the United States. The articles must be regarded as delivered *for the use of the United States*, because not only was an assignment of the bill of lading and of the policy of insurance the appropriate method, under the circumstances, of such delivery, and so to interpret the contract is alike consistent with its words and the provisions of the statute, but any other interpretation would render it violative of the statute. (3.) The services rendered and the articles delivered before the payment was made may well be

presumed to have been considered a fair equivalent for the amount of the payment.

It is, therefore, apparent that the contract in this case conformed to the three requisites of the statute already noticed. The assignment and delivery of the bill of lading, and of the policy of insurance to the United States, were equivalent to, and in effect were, a delivery to them of the articles which had been shipped, (Newson *vs.* Thornton, 6 East., R. 41;) and the delivery, as we have seen, was for the use of the United States. But a delivery of articles for a valuable consideration to the United States *for their use* is the most expressive form in which the transfer of the property in such articles to them could be made. We are, therefore, of the opinion that upon the assignment and delivery of the bill of lading and policy of insurance, and the receipt by the petitioners of the stipulated payment, the materials became the absolute property of the United States.

The covenant on the part of the United States to transport those materials from San Francisco to the several places where they were to be used when required by the petitioners was express and unconditional. Ever since the leading case of Paradine *vs.* Jane Aleyn, R. 267, it has been the settled doctrine of the common law that where the law creates a duty or charge, and the party is disabled to perform it without any default in him, and hath no remedy over, there the law will excuse him. But when the party, by his own contract, creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract. In that case, which was an action of debt for rent, the defendant pleaded that a certain German prince, by name Prince Rupert, an alien born, an enemy to the king and kingdom, had invaded the realm with a hostile army, and with the same force had entered upon the defendant's possession, and him expelled and held out of possession, whereby he could not take the profits; upon demurrer, the plea was held bad.

A lessee of a house, who covenants generally to repair, is bound to rebuild it if it be burned by an accidental fire. Bullock *vs.* Dommitt, 6 T. R., 650. On a covenant to build a bridge in a substantial manner, and to keep it in repair for a certain time, the party is bound to rebuild the bridge, though it be broken down by an unusual and extraordinary flood. Brecknock Co. *vs.* Pritchard, 6 T. R., 750. In that case Lord Kenyon, C. J., said: "The principle stated by the counsel for the plaintiffs is the true one; if the defendants had chosen to except any loss of any kind, it should have been introduced into the contract by the way of exception. It is sufficient to say here that the contract of the defendants extends to this case, that they have not fulfilled it, and, therefore, that they are answerable,"

The same doctrine is held in Atkinson *vs.* Ritchie, (10 East. R. 530,) Barker *vs.* Hodgson, (3 Mau. & Sel. 267,) Shubrick *vs.* Salmond, (3 Burr. R., 1637,) and in other cases. In the case of Barker *vs.* Hodgson, the charterer of a ship, who covenanted to send a ship alongside, at a foreign port, was not excused from sending it alongside, though, in consequence of the prevalence of an infectious disorder at the port, all public intercourse was prohibited by the law at the port, and though

he could not have communication without danger of contracting and communicating the disorder. In that case Lord Ellenborough, C. J., said: "Perhaps it is too much to say that the freighter was compellable to load his cargo; but if he was unable to do the thing, is he not answerable for it upon his covenant? Is not the freighter the adventurer who chalks out the voyage, and is to furnish at all events the subject-matter out of which freight is to accrue? The question here is, on which side the burden is to fall?"

The law of carriers has no application to this covenant. The United States were in no sense carriers for the petitioners, because, as we have seen, the materials to be carried were the property of the United States. The United States undertook to transport them to the places where they were to be used, and the petitioners on their part were required to send therewith, in the same vessel, a competent artisan and a sufficient number of workmen to place the apparatus and fixtures without unncessary delay in the several towers erected for their reception. The materials were lost by shipwreck, and the United States were thereby prevented from the performance of their covenant. But the act which they undertook to do was possible when undertaken. If they "had chosen to except any loss of any kind, it should have been introduced into the contract by way of exception." We are of the opinion that it falls within the doctrine of Paradine *vs.* Jane. But, as we have already intimated, we do not deem it necessary now to inquire what damages the petitioners are entitled to by reason of the breach of this covenant.

It remains now for us to consider the construction of the charter party. As regards the voyages, for which the charter party provides, the relations of the parties, their rights, duties, and resposibilities, are to be determied by it. The petitioners, therefore, did not stand in the relation of common carriers to the United States, and the law of common carriers has no application to them. Either the petitioners are to be regarded as private carriers for hire, or the United States became, under the charter party, owners of the Oriole *pro hac vice.*

If the petitioners were private carriers for hire, they were bound only for *ordinary* dilligence, and responsible only for *ordinary* neglect. They were bound to such dilligence as every prudent man commonly takes of his own goods, and conseqently were not liable for any loss or injury to the goods intrusted to them, which was occasioned by *unavoidable* accident, or by such means that they could not have guarded against it by any ordinary dilligence. The law, too, would imply an agreement on their part to make good any losses arising from the negligence of their own servants.—(Brind *vs.* Dale, 8 Carr. and P. 207.) It may also be remarked that the responsibility of a private carrier for hire may be increased by special contract; but even an express *waranty* that the goods shall go *safely* merely puts him into the situation of a *common carrier.*—(Per Chambre, J, in Robinson *vs.* Dunmore, 2 Boss. & Pull., R. 417.) It is also considered that even an express promise by a private carrier to carry goods *safely* is but the undertaking implied by law to carry free from ordinary negligence.—(Story on Bailment, §457, §33; Augell on

Carriers, §60; Ross *vs.* Hill, 2 C. B. 877.) The most that can be said in this case is, that the petitioners undertook to carry and deliver. There was no express warranty, and no contract to carry safely and securely. Under a contract to carry and deliver, the law only implies the promise to use ordinary diligence. If, therefore, the petitioners stood to the United States in the relation of private carriers for hire, and the wreck of the barque Oriole was not occasioned by unavoidable accident, but might have been guarded against by ordinary diligence, then they would be liable to the United States for the damages which they thereby sustained; but otherwise the United States would have no claim against them on that account.

We do not think it necessary at this time to consider whether the United States were, under the charter party, owners of the barque Oriole *pro hac vice*, because, if they were, the extent of the liability of the petitioners to the United States would not, in that event, be greater than if the petitioners should be regarded as private carriers for hire. Other questions also arise in this case, but we think it would be premature now to decide them.

We cannot say that the facts set forth in the petition of the claimants do not furnish any ground for relief.

Let an order be made authorizing the taking of testimony in this case.

GIBBONS & KELLY *vs.* THE UNITED STATES.

On the final hearing of the evidence, the opinion of the court was delivered by SCARBURGH, J.

By an act of Congress approved September 28, A. D. 1850, an act approved March 3, A. D. 1851, and an act of August 4, A. D. 1854, various appropriations were made for light-houses, and "for completing the light-houses" in California and Oregon. (9 Stat. at Large, 500; 9 ibid, 628; 10 ibid, 563. See opinion of the court in this case, delivered January 8, A. D. 1856.)

On the 30th day of April, A. D. 1852, the petitioners, by a contract then entered into with the Secretary of the Treasury, acting for and on behalf of the United States, undertook to erect a light-house at each of the following points: Alcatraz island, Point Conception, Battery Point, San Diego, Monterey, Faralones, Humboldt Harbor, and Cape Disappointment. (Ex. doc., Senate, No. 53, 2d sess. 33d Cong., pp. 12, 18.)

The Secretary of the Treasury substituted the French lens for the illuminating apparatus, which the petitioners contracted to furnish; and it was agreed that $8,561 92 should be deducted therefor from the gross sum to be paid to the petitioners. (Same doc., No. 53, exhibit C., p. 18.)

Under a modification of the original contract, made on the 5th day of August, A. D. 1852, it was agreed that the additional sum of $7,500 should be paid to the petitioners for certain changes therein

mentioned, and that they should be paid at a certain rate therein specified for any increase in thickness of wall which might be directed by the Secretary of the Treasury. (Same doc., No. 52, p. 18.)

All the materials to be sent from Atlantic ports, except the illuminating apparatus, were shipped and insured, and the bills of lading and policies of insurance were assigned and delivered to the United States. The insurance was at and from the city of Baltimore to San Francisco. (Same doc., pp. 66, 70; deposition of Henry A. Didier, p. 33; deposition of William Krebs, p. 35; deposition of William H. Hemmick, p. 38.) Afterwards, the Secretary of the Treasury paid the petitioners the sum of thirty-five thousand dollars, agreeably to the provisions of the contract.

In the opinion heretofore delivered by this court, we held, without dissent, that, upon the assignment and delivery of the bill of lading and policies of insurance, and the receipt by the petitioners of the stipulated payment, the materials became the absolute property of the United States. That portion of the contract which bears directly upon this point is as follows: "And it is futher agreed between the parties to this contract, that in consideration of the advances of money to be made by the parties of the first part for the illuminating apparatus and other materials for the said several light-houses to be sent from Atlantic ports, that as soon as the said illuminating apparatus, lantern fixtures, fog-signals, oil vessels, and tin are shipped and insured, and the policy of insurance is assigned and delivered, accompanied by a duplicate of the bill of lading, to the said party of the second part, and upon the execution and delivery of a penal bond in the sum of seventy-five thousand dollars, with security to the satisfaction and approval of the said party of the second part, conditioned for the faithful execution of this contract on the part of the said parties of the first part, he, the said party of the second part, will thereupon pay and advance to the said parties of the first part, or their order, the sum of thirty-five thousand dollars."

It is supposed that the effect of the assignment and delivery of the bill of lading and policies of insurance was merely to transfer the materials to the United States by way of mortgage, or as a collateral security for the thirty-five thousand dollars. The contract certainly does not, in terms, declare that such was the intention of the parties; and what there is in the language of the contract from which such an intention can be justly inferred we have never been able to discover. There was no contingency then in the contemplation of the parties, upon the happening of which the thirty-five thousand dollars were to be repaid to the United States; and the contract plainly provides that, after the assignment and delivery of the bill of lading and policies of insurance to the United States, the materials were never again to return to the possession of the petitioners, except at the places where they were to be used, and then only for the special purpose of being used in the construction of the light-houses. The transportation of the materials from San Francisco to the several places where they were to be used was undertaken by the United States, and no provision was made in regard to the loss of them during their transportation; and such loss does not seem to have entered into the con-

emplation of the parties. For all the purposes, therefore, then contemplated by the parties, an absolute transfer of the materials to the United States would have been as effectual as a transfer of them by way of collateral security. The only security which there is any good reason for saying was even asked for by the United States, was the penal bond mentioned in the contract. It seems to us, therefore, that there is nothing, either in the language of this contract, or in its character, from which it can justly be inferred that the assignment and delivery of the bill of lading and policies of insurance was intended to operate merely as collateral security.

We showed in our former opinion, that an assignment and delivery of the bill of lading and policies of insurance was the appropriate method of transferring the materials to the United States in absolute property. If one merchant, after having shipped goods, assign and deliver the bill of lading and policy of insurance for a valuable consideration to another, he thereby transfers to him the property in the goods themselves; and if this be the whole transaction, the transfer is absolute, for the reason that every transfer for a valuable consideration is *prima facie* absolute. To render it conditional, or by way of pledge, or of mortgage, something else must appear besides the mere assignment—the condition must be shown. Now, here nothing is mentioned to indicate an intention to make a conditional transfer, or one by way of pledge, or of mortgage. On the contrary, inasmuch as one security is in terms provided for, the just inference is that no other was contemplated by the parties. *Expressio unius, est exclusio alterius.* And, moreover, to hold that the high public functionary, with whom this contract was made, intended to provide for a transfer by way of security, and yet used the very terms which he ought to have employed if the transfer had been intended to be absolute, would be to ascribe to him a degree of carelessness and looseness, if not of bad faith, which surely ought not to be lightly imputed to him. A public officer may stand, if in such cases he is judged by his words fairly and justly interpreted, but the purest, and best, and wisest must fall if their words are disregarded, and mere conjecture is substituted in the place of construction.

But again, if a mere security was intended, why was not the advance made before the materials were bought? It would, doubtless, have been more convenient to the petitioners, and greatly to their advantage, to have received the thirty-five thousand dollars before they went into the market to buy materials. We cannot say, with absolute certainty, why this was not done. We know, however, that it could not have been lawfully done. It is forbidden by the express words of the act of January 31, A. D. 1823, (3 Stat. at Large, 723,) referred to in our former opinion. And here we find abundant reason why it was not done, and further inquiry upon this point is therefore unnecessary. The very structure of the contract shows that the parties had that statute in contemplation, and hence the only just and fair conclusion is, that it was made with reference to it. We cannot suppose that the head of the Treasury Department was ignorant of that law. But, as we have shown in our former opinion, it would have been as much a violation of it to have made an *advance* of money *after*

as *before* the assignment and delivery of the bill of lading and policies of insurance. A *payment* for articles delivered for the *use* of the United States is allowed, but this necessarily implies that the articles thus delivered become, upon the making of the payment, the property of the United States.—(See our reasoning upon this subject in our former opinion.) If there could be reasonable doubt upon this point, the benignity as well as the justice of the principle on which that opinion in this respect is in part founded, would make it our imperative duty to adopt the construction which is consistent with lawful conduct and lawful intention. If a different principle should prevail, its harshness would shock every sentiment of justice and of right, and render a public office a position to be shunned, because it would environ it with dangers which no prudent man would ever encounter.

It is urged, however, that the petitioners themselves speak of the materials as having been held by the United States as "security," and as "collateral security."—(Senate ex. doc., No. 53, 33d Con., 2d sess., pp. 158, 159.) But, in another place, they say: "All the property of your memorialists on board of the said barque Oriole had been, sometime before, transferred to the government as security for certain advances made by the government. It was, therefore, *in point of fact, the property* of the United States, and was at the risk of the government at the time of its loss."—(Same doc., p. 11.) In their petition filed in this court, they say: "That said goods were *the property of the government*, and, if not, were, at the time of the loss, in the exclusive possession and charge of a government officer, * * * and they were, therefore, at the risk of the government, under all the circumstances." Now, if what the petitioners have said on this subject is to furnish the rule for the construction of the contract, on which of these statements are we to rely? According to the first, they were held by the United States as security; but, according to the others, they were the property of the United States. Doubtless the truth is, the memorials and petitions were drawn up by counsel, and the portions of them just referred to are obviously mere arguments, for which the petitioners cannot be regarded as in any way responsible. And, moreover, the contract must speak for itself; and an erroneous construction put upon it by the parties to their prejudice is certainly not conclusive upon them. The question is not, what is the opinion of the parties as to the legal effect of the contract. If it were, then they must be taken altogether, for it would be obviously unjust to garble them. But the question which we must consider is, what is the legal effect of the contract; and in doing this we must look to the contract itself.

It is also urged that the witnesses testify that the transfer of the materials to the United States was by way of security. It seems to us that the question here is one of construction, and that parol testimony is not admissible to explain the contract. But, even if it could be received for that purpose, the testimony in this case is wholly insufficient to show that the transfer was by way of security. The witness Hemmick says: "The building materials were shipped and in*tured, the* policies of insurance assigned to the United States; * * * *she entire* cargo being thus secured to the United States, to cover ad-

vances." It will be observed that the attention of the witness was not drawn to the distinction between a transfer by way of security and an absolute transfer; and that the latter would as effectually secure the cargo to the United States, to cover advances, as the former. The whole object of the act of 1823 itself was to *secure* the interests of the United States; but that object is attained by making materials paid for the property of the United States.—(See our former opinion.) Surely the testimony of this witness cannot be sufficient to alter the plain words of the contract.

The witness Hodge testifies that "such advance was made. * * * As security to the United States, all these materials * * * were transferred to the United States by invoice and bill of lading; the whole cargo going consigned to the collector at San Francisco, to be held by him for account of the United States, and only to be delivered by him to the contractors at the sites of the respective light-houses, and to be used in their construction." The attention of this witness was not called to the distinction between a transfer by way of security and an absolute transfer; nor was the contract submitted to him. He spoke from his recollection of the transaction. Whether he meant the kind of security which it was the design of the act of 1823 to provide for the United States, or a mere collateral security he was not asked to state. His mind was not drawn to that subject. There can be no just ground for saying that his testimony can be relied on to show that the contract is different from what it purports to be. On the contrary, the testimony of both these witnesses, properly understood, is, we think, entirely consistent with the terms of the contract, and with that construction of it which we have adopted. We adhere to the opinion which we have heretofore expressed upon this subject, and for the reasons therein set forth.

The case of the United States *vs.* Robert Tillotson, 1 Pain's R., 332, is not an authority opposed to our views. What is said in that case is a mere *obiter dictum*, and in no way affected the questions actually involved. That case, too, was decided before the act of 1823 was passed. There can be no necessity, therefore, for us to take any further notice of it.

Believing, as we do, that the materials were the property of the United States, we have not discussed the question as to their liability for their loss, if the materials were in their possession merely by way of collateral security. It seems to us, however, that the result would be the same even if the materials were not the property of the United States at the time of their loss. They were in no sense mere carriers for the petitioners. There were certain light-houses to be built for them. A part of the work was to be done by them and the rest by the petitioners, both respectively undertaking absolutely and unconditionally to do their several parts. The delivery of the materials at the places where they were to be used was undertaken by the United States. For the performance of this part of the work their obligation, under the contract, was as absolute and unconditional as that of the petitioners, upon its being done, to use the materials in the construction of the light-houses. If they "had chosen to except any loss of any kind, it should have been introduced into the contract by way of

exception."—(Brecknock *vs.* Pritchard, 6 T. R., 750. See our former opinion.)

The vessel arrived at San Francisco on the 28th day of January, A. D. 1853. (Senate Ex. Doc. No. 53, 2d session 33d Cong., p. 27.) William J. Timanus "arrived in California" on the 17th day of December, A. D. 1852, and commenced his labors on the light-houses at Alcatras Island and Battery Point, and they were nearly completed when the vessel arrived at San Francisco. (Deposition of Timanus, answer to 9th int., and answer to 10th int., pp. 14, 15.)

On the 8th day of February, A. D. 1853, the petitioners entered into a charter-party with Beverly Sanders, collector of the port of San Francisco. It is set forth at length in the Senate Doc. No. 53, p. 20, and in the opinion of this court, heretofore delivered, its principal features are mentioned.

The petitioners completed the light-houses at Alcatras island, Battery Point, Monterey, and Faralones island. Afterwards, about the 26th or 28th day of August, A. D. 1853, they sailed in their vessel from San Francisco for Cape Disappointment. In attempting to enter the Columbia river, the vessel struck on the outer bar, and, together with all her cargo, was lost. She had on board at that time the materials for the four remaining light-houses, an agent of the government, and artisans and operatives to erect the light-houses. All the persons on board were saved.

In consequence of the wreck of the vessel, the petitioners were obliged to pay, and did pay to the men employed to build the light-house at Cape Disappointment, for wages, board, and passage back to San Francisco, $5,811 54. This was an entire loss to the petitioners.

The materials which were shipped at Baltimore for San Francisco, and lost in the vessel, cost the petitioners, according to the estimate made by William J. Timanus, in December, A. D. 1854, the sum of $10,558. He makes the same estimate in his deposition on file in this case. (See answer to the 23d interrogatory, p. 20.)

The wreck of the vessel was occasioned by the act of God. She was under the command of a skilful and experienced pilot. Enoch Moore thinks that the wreck was caused by the pilot's missing the "slew" or channel, "by probably a few feet, the tide having set the vessel too much to the south, and the wind not being sufficient to resist the tide." (Moore's deposition, answer to the 14th interrogatory, p. 8.) William J. Timanus, in his deposition, says: "The pilot being on board, we proceeded in company with five other vessels, they being ahead. When we arrived near the bar, he (the pilot) said he was going to take the vessel in through the middle channel; the pilot also told witness that he was fearful that they would get on the bar too late; the five vessels went over safely; this vessel (the Oriole) was said to draw more water than either of the other five vessels, and when she got on the bar, he (the pilot) said the vessel had met the ebb-tide, and he said there was not sufficient wind to stem the said tide; the current drove her in shallow water, when she struck and then drifted among the breakers. After striking the third time, the pilot declared the vessel lost. All hands on board then provided themselves with the means of escape, the vessel then filling with water.

Witness escaped in a surf boat; all hands were saved, but everything on board was lost, with the exception of a small trunk, containing two thousand dollars, the same being thrown in the boat in which witness was, but by whom thrown, witness cannot say. They were exposed in the open boats for seventeen hours, without either food or water, having no time before leaving the vessel to provide either. From the time the pilot came on board he had the whole command of the vessel." (See Timanus' deposition, answer to the 14th interrogatory, p. 16.)

The wreck occurred on the 19th day of September, A. D. 1853. (See Senate Ex. Doc. No. 53, p. 57, Samuel M. Lawder's affidavit.)

After the loss of the Oriole, the petitioners built the light-houses at Cape Disappointment, Humboldt bay, Point Conception, and Point Loma, with materials furnished and carried to those points, respectively, by themselves.

The charter-party was disapproved by the secretary of the treasury, and Mr. Hammond, the collector of San Francisco, and successor of Mr. Sanders, who entered into the charter-party, in behalf of the United States, was instructed accordingly. But Mr. Hammond, in a letter addressed to the Secretary of the Treasury, dated July 28, A. D. 1853, stated as follows: "I am induced to report, without hesitation, to the department, that the arrangement made by my predecessor is, in my judgment, a wise and economical one, and I shall continue it until further instructions from the department." It was continued until the loss of the "Oriole," on the 17th day of September, A. D. 1853, and the Treasury Department has paid the petitioners for the whole period that the charter was in operation at the rate therein stipulated. We are of the opinion that under the circumstances of this case, this charter-party furnishes the best and fairest standard by which to estimate the amount which ought to be paid to the petitioners for the transportation of materials to all the light-houses. It has been approved by two collectors of the customs at San Francisco, sanctioned afterwards by the Secretary of the Treasury, and sustained by the Committee of Claims in the Senate. (Doc. No. 53, p. 109.) We think it entitled to much higher consideration than mere estimates made by witnesses.

The agent of the petitioners arrived at San Francisco on the 17th day of December, A. D. 1852, and commenced his labors on the light-houses at Alcatras Island and Battery Point. We do not suppose that he could have commenced on the very day of his arrival. At most, he could not have been engaged in the transportation of materials more than one month and twenty days before the date of the charter-party. Allowing the petitioners compensation for transporting materials to Alcatras Island and Battery Point for this period, at the rate fixed in the charter-party, they will be entitled therefor to the sum of $5,000.

The "Oriole" was lost on the 17th day of September, A. D. 1853. A considerable period of time must have elapsed before the petitioners could have been prepared to recommence the transportation of materials for the construction of the four light-houses, which they afterwards built. They were obliged to return to San Francisco, and make preparations to go on with the work. Timanus was in San Francisco

in October, A. D. 1853; and we infer from his testimony (see Timanus' deposition, answer to 33d interrogatory, p. 27) that the transportation did not recommence earlier than January, A. D. 1854. They were completed on the 15th day of July, A. D. 1854. We do not feel ourselves authorized by the evidence to estimate the time occupied in this transportation at more than six months. Thus estimating it, the petitioners are entitled therefor to the sum of eighteen thousand dollars.

Kelly, one of the petitioners, and Timanus their agent, were detained in California seventy-four days, (sixty-four days, excluding Sundays,) waiting for an agent of the United States to receive the light-houses.—(See Timanus' deposition, answer to 20th interrogatory, p. 18; ibid., answer to 18th and 19th interrogatories, p. 19; ibid., answer to 25th and 26th interrogatories, p. 21; More's deposition, answer to 20th interrogatory, p. 10.) But it does not seem to us that it was necessary that more than one of them should have remained for that purpose. The evidence shows that his services were worth fifteen dollars a day. The petitioners, we think, are entitled therefor to $960.

For reasons stated in our former opinion, we think that the materials carried from Baltimore and lost in the "Oriole" were the property of the United States. According to the original contract, the payment of $35,000 was to be made for all the materials, including the illuminating apparatus. Those actually shipped cost the petitioners $23,085.—(Doc. No. 53, p. 70.) There was deducted for the illuminating apparatus $8,561 92.—(Ibid., pp. 18, 25.) These two sums amount to $31,646 92. The contract to pay for materials, which would cost this sum, and for their shipment and insurance, the sum of $35,000 was certainly not unreasonable. And, moreover, if the price agreed upon for the erection of the light-houses was fair and just, any erroneous estimate which might have been made of the value of the materials was necessarily to be corrected in the final settlement, when the $35,000 were to be accounted for in the manner provided in the original contract. It is true, that, by the terms of the contract, if the French lens should be determined upon by the United States, the payment was nevertheless to be the same: but the ultimate result was not, and could not, be affected by it. We do not find in these circumstances, or in any others which appear in this case, evidence of a fraudulent design in any person. The original contract does not limit any period within which the United States should elect to substitute the French lens for the apparatus to be furnished by the petitioners. They might have done so after the petitioners had actually procured the illuminating apparatus which they contracted to furnish. And, moreover, it is not entirely clear that the petitioners were entitled to the payment of the whole sum of $35,000, if the illuminating apparatus was not shipped by them. It was to be made "for the illuminating and other materials." The result, we think, has shown that the disadvantage was altogether on the side of the petitioners.

The settlement which has heretofore taken place between the United States and the petitioners (Doc. No. 53, pp. 23, 25) seems to have been

based upon the assumption that this transaction was entirely fair and *bona fide*. We have found no reason to think otherwise.

But whilst the United States necessarily became the owners of the materials, they were at the same time entitled to have the payment of $35,000 accounted for in the manner prescribed by the original contract. After the loss of the "Oriole," the petitioners may not have been bound to proceed with the light-houses then to be built, unless the United States had furnished the materials. But be this as it may, the United States did not furnish them. This was done by the petitioners, and they are entitled to be paid therefor what they were reasonably worth. They were reasonably worth what the petitioners paid for them, and a fair per centage thereon to compensate them for their trouble and outlay of money. But there is no evidence on these points in this case. In the absence of such evidence, we can only allow the petitioners the cost of the articles on board of the "Oriole" at the time of her loss. This was $10,558.—(See Timanus' deposition, answer to 23d interrogatory, p. 20.)

We are also of the opinion, that the United States are liable for the actual damages sustained by the petitioners by the failure of the United States to deliver the materials at Cape Disappointment. (See our former opinion.) These are shown to have been $5,811 54.

If these views be correct, then the United States are indebted to the petitioners as follows:

For transportation to Alcatras Island and Battery Point, - - - - - - -	$5,000 00	
Deduct amount paid therefor by the Secretary of the Treasury, $450 + 1,140, - - -	1,590 00	
		$3,410 00
For transportation to Cape Disappointment, Humboldt bay, Point Loma, and Point Conception, - - - - - - - -	18,000 00	
Deduct amount paid by the Secretary of the Treasury, $1,238 + $1,138 + $3,923 + $1,250, - - - - - . - -	7,549 00	
		10,451 00
For detention of Timanus after the light-houses were completed, 74 — 10 Sabbaths = 64 days, at $15 a day, - - - - - -		960 00
For goods lost in the "Oriole," - - -		10,558 00
For damages occasioned by the failure to deliver the materials at Cape Disappointment,		5,811 54
		31,190 54

We shall report to Congress a bill in favor of the petitioners, for the sum of $31,190 54.

GIBBONS & KELLY *vs.* THE UNITED STATES.

Judge BLACKFORD's dissenting opinion:

I dissent from that part of the judgment of the court in this case which allows the claimants the sum of $10,558 for the goods lost by the shipwreck on the Oregon coast, and from that part which decides that the claimants are entitled to be paid for the materials which they can prove to have been furnished by them for some of the light-houses after the shipwreck.

The foundation of the claim is a written agreement, dated April 30, 1852, respecting the building of certain light-houses on the Pacific coast.

That agreement states, among other things, "that in consideration of the advances of money to be made by the parties of the first part, (Gibbons & Kelly,) for the illuminating apparatus and other materials for the said several light-houses to be sent from Atlantic ports, as soon as the said illuminating apparatus, lantern fixtures, fog signals, oil vessels, and tin, are shipped and insured, and the policy of insurance is assigned and delivered, accompanied by a duplicate of the bill of lading, to the said party of the second part, (the Secretary of the Treasury,) and upon the execution and delivery of a penal bond in the sum of $75,000, with security to the satisfaction and approval of the said party of the second part, conditioned for the faithful execution of this contract on the part of the said parties of the first part, he, the said party of the second part, will thereupon pay and advance to the said parties of the first part, or their order, the sum of $35,000."

It was further agreed, "that in case a revenue cutter, or other public vessel of the United States, should be proceeding to the Pacific coast at or about the time said above named illuminating apparatus, lantern fixtures, fog signals, oil vessels, and tin, together with the entire wood-work of said several light-houses, except the joists and rafters, are ready for shipment, the same will be taken on board of said vessel and delivered to the collector of San Franisco, free of charge to the said parties of the first part; and in the event that no such vessel is sent as aforesaid, that then, and in that case, the said party of the second part will be bound to otherwise transport the said articles by other vessel or vessels, free of freight, to San Francisco, provided that the entire freight on the wood-work does not exceed $2,500, exclusive of the freight on the other articles; and provided further, that in case the said articles are transported by the parties of the first part, the party of the second part will pay therefor, upon the production to him of the evidences of such shipment, as hereinbefore mentioned, the usual and customary cost of the freight thereof."

It was further agreed, "that the said articles so to be shipped as aforesaid are not to be delivered to the said parties of the first part at San Francisco, but the same are to remain in the possession of the collector until delivered at the several points where the same are to be used, and to which several places they are to be transported under the authority of said collector, when required by the said parties of the *first part,* in a revenue cutter of the United States, or other vessel;

the said parties of the first part being also required to send therewith, in said cutter, a competent artizan and a sufficient number of workmen to place said apparatus and fixtures, without unnecessary delay, in the several towers erected for their reception. It is to be understood, however, that in case the said parties of the first part shall prefer to ship the said illuminating apparatus, lantern fixtures, fog-signals, wood-work, and other accessories, or any part thereof, directly to the several points, and place the same in the several structures, without going to San Francisco, they, the said parties of the first part, shall have the right and privilege to do so."

The agreement also says: "It is further understood that the advance payment of $35,000, herein provided for, is to be deducted from the specific payments upon each light-house, as the same are respectively finished, in a *pro rata* proportion; that is to say, $3,860 of the said advance payment are to be deducted from the price of each of the several light-houses in California, and the sum of $7,980 from the price of that in Oregon." (See this contract in Executive Document of the Senate, No. 53, 33d Congress, 2d session, pp. 12 to 16.)

One of the claimants' witnesses, William H. Hemmick, who was the clerk and disbursing agent of the claimants, says, among other things, "that for the speedy commencement of their contract, (the contract above mentioned,) and to avoid the delays consequent upon charters of vessels, the contractors purchased a first class Baltimore built barque, called the 'Oriole,' of some three hundred tons, and caused such additions and alterations to be made as would make her suitable for the safe and speedy transportation of the required materials from Baltimore to San Francisco. The building materials were shipped and insured, the policies of insurance assigned to the United States the 5th day of August, 1852, the entire cargo being thus secured to the United States to cover advances." "The entire cargo thus assigned was delivered to the collector of the port of San Francisco, California, on the arrival of the barque Oriole." The same witness, in another deposition, gives a list of the articles which he shipped as aforesaid to California, and states that their value was $23,085. He also states that the bills of lading were assigned to the government. (See said document No. 53, pp. 58, 59, and printed depositions, pp. 37, 38.)

Another witness of the claimants, William L. Hodge, states that the said contract between the claimants and the United States was made by him, whilst he was Assistant Secretary of the Treasury. In his deposition, he says: "The department, expecting to send one or more revenue cutters to the Pacific, agreed to transport in them, free of expense to the contractors, any articles or materials required for said light-houses, and which they might wish to send. In default of so transporting them by a public vessel, the United States were to pay the freight on the same by any private vessel. As the contractors intended to send a large quantity of the wood-work, and knowing the high rate of freights to that quarter, I feared that on the great bulk of such wood-work it would amount to a heavy sum. I therefore insisted upon a limit upon the amount of freight of such wood-work, and, after a long discussion, and with great reluctance on the part of the contractors, they agreed to a maximum limit of $2,500 for the freight on all the

timber, joists, and wood-work, and with customary freight on the other articles and materials, if they did not go by a public vessel. As the United States did not send any cutter at the time, all the wood-work, articles, and materials were shipped by a private vessel; the freight on all which, including the $2,500 allowed for the wood-work, amounted to upwards of $5,000, which was paid to the contractors by the treasury on account of the United States."

The following interrogatory was put to this witness: "Do you know anything relative to the advance of money by the government to the claimants for the purchase of the said materials? If yea, please state the amount of such advance, the reason why it was made, whether any security was given by the claimants to the United States for such advance by the transfer of the materials, bill of lading, policies of insurance, or otherwise, and all the circumstances attending the same."

Ans. "Such advance was made to the contractors to the extent (if my recollection serves me) of about $30,000, to enable them to pay for the said materials; and I believe they were entitled to such advance by a stipulation in the contract. As security to the United States, all these materials, including the entire cargo on board the vessel in which they were shipped, were transferred to the United States by invoice and bill of lading, the whole cargo going consigned to the collector at San Francisco, to be held by him for account of the United States, and only to be delivered by him to the contractors at the sites of the respective light-houses, and to be used in their construction. All these articles were fully insured; and as an additional security to the United States, in case of their loss on the voyage, the policies of insurance were transferred to the United States by indorsement of Gibbons and Kelly, I think, to Thomas Corwin, Secretary of the Treasury, or to his successor in office, and the loss, if any, under the said policies, was made payable to him. I distinctly recollect receiving all the above documents, and writing myself the endorsement of transfer on the policies, which transfer was duly executed by Gibbons and Kelly. These invoices, bills of lading, and policies of insurance, were in the Treasury Department up to the period of my resignation as Assistant Secretary of the Treasury, in March, 1853, which, however, I understand have been mislaid, and cannot be found." (See printed depositions, pp. 49 to 43.)

The claimants, Gibbons & Kelly, in their memorial to the Committee of Claims of the Senate, use the following language: "II. Having examined the provisions of the contract on this point, let us now look at the facts. We, finding that no government vessel or revenue cutter was proceeding to San Francisco, or either of the points named, instead of chartering a vessel to carry out the men and materials, preferred purchasing the barque 'Oriole,' and undertook the transportation of the materials (illuminating apparatus and wood-work) to San Francisco, and upon arriving there offered to deliver up to the collector at that port, the articles so shipped, so that the same might remain in his possession, *and might be transported under the authority of the said collector, in a revenue cutter, or other vessel, to the several points where the same were to be used.*

"*The* collector at San Francisco, looking to the difficulty of loading

and unloading the barque, to the great cost of storing the goods at San Francisco, and to the risk of such a disposition of the materials, preferred to charter the barque 'Oriole,' from the contractors, and to convert it into a store ship, and, as needed, into a transport vessel. The government took charge of the barque, placed an officer appointed by the collector (Captain Moore) on board, and was as completely the master and charterer of the vessel as if it had been a rented warehouse on shore. The former collector, Mr. B. C. Sanders, effected the charter, and his successor, Mr. Hammond, although the department at Washington declined, at first, to ratify the charter, informed the department that it was the best, most advantageous, and cheapest arrangement that he could make."

The said memorial of the claimants also contains the following paragraph:

"5th. The only remaining inquiry is as to the loss by the barque 'Oriole.' Here again the board [Light-house Board] is *entirely at fault with regard to the facts.* The collector at San Francisco did *not* 'relinquish his control and possession to the contractors at San Francisco.' The property was *not* lost while in the possession and at the unrestricted disposal of the contractors. On the contrary, the barque 'Oriole,' was the government barque, chartered by its officers, and bore the same relation to these contractors as if the government had hired the barque from any other parties. In addition to which, the materials on board (all of which were held as security by the government) were under the supervision and control and in the possession of Captain Moore, the government agent on board, who was only authorized to deliver to us as *we might need them.* Are not parties who have the custody of collateral securities bound to use due caution and ordinary prudence in taking charge of and preserving those securities? And is the government of the United States, intrusted with the custody of goods as security, with the policy of insurance in its own hands assigned for protection, to carry the collaterals to any part of the world, and then, when lost upon some dangerous coast, to be permitted to say that it is not responsible to the principal for the loss, but that he must supply what their negligence has brought upon him? We do not think that the committee of the Senate will sanction such a doctrine, when they recollect that on board this barque were the stone decks, cut-stone steps and sills, hardware, oils, paints, woodwork, and other materials for *all* the remaining light-houses contracted to be put up, together with the carts, lighters, &c., &c., necessary for doing all the unfinished work. Can it be that, instead of storing the articles for the other lights at San Francisco, the government, preferring to have them on board this vessel, can carry them all over the world," &c. (See this memorial in said document No. 53, pp. 152 to 159.)

The petition of the claimants to this court, to a part of which the court refers, contains the following statements:

"And the Acting Secretary of the Treasury required your petitioners to assign, and they did assign to the government, by way of indemnity for the advance of pre-payment of the sum of $35,000 on their said contract, the policies of insurance and bills of lading," &c. Again:

"Your petitioners further show that by the express contract of the United States, and requirement of the Secretary of the Treasury, they received into their sole and exclusive possession and control all the articles and materials enumerated in the list aforesaid, and belonging to your petitioners. That the same were so received by the United States as aforesaid, to secure the due performance of the contract by your petitioners; and in consideration of such delivery into the possession of the United States, and of the assignment of the policy of insurance and bills of lading therefor, the United States undertook and stipulated to transport said articles," &c.

It appears to me plain, from said agreement of April 30, 1852, from the testimony aforesaid of the claimants' witnesses, Hemmick and Hodge, and from the language of the claimants in their said memorial and petition, that the goods lost in the "Oriole" were, at the time of the loss, the property of the claimants. They were originally owned by the claimants, and were transferred by them to the United States as *collateral security* for the advance of $35,000 to them by the Secretary on the contract for the building of the light-houses. That advance and the security for it were required by the contract, and the evidence shows that, in that respect, the contract was complied with. What says Mr. Hodge, one of the claimants' witnesses, who, as Assistant Secretary of the Treasury, made the contract with the claimants, and wrote the transfer of the policies? He was asked if he knew any thing relative to the advance of money, &c. He answered as follows: "Such advance was made to the contractors to the extent (if my recollection serves me) of about $30,000, to enable them to pay for the said materials; and I believe they were entitled to such advance by a stipulation in the contract. As security to the United States, all these materials, including the entire cargo on board the vessel in which they were shipped, were transferred to the United States, &c." What say the claimants themselves in there memorial above referred to? They use the following language: "In addition to which, the materials on board (all of which were held as security by the government) were under the supervision," &c. Again, in the same memorial, the claimants, in charging the government with not taking proper care of said materials, ask the following questions: "Are not parties who have the custody of collateral securities bound to use due caution and ordinary prudence in taking charge and preserving those securities? And is the government of the United States, intrusted with the custody of goods as security, with the policy of insurance in its own hands, assigned for protection, to carry the collaterals to any part of the world," &c.? What say the claimants in their petition to this court, (the facts stated in which one of the claimants swears to be true to the best of his knowledge and belief?) They say that "they did assign to the government, by way of indemnity for the advance or prepayment of the sum of $35,000 on their contract, the policies of insurance," &c. * * * * * * * * * *

"That by the express contract of the United States, and the requirement of the Secretary of the Treasury, they received into their sole and exclusive possession and control all the articles and materials *enumerated* in the list aforesaid, and belonging to the petitioners.

That the same were so received by the United States, as aforesaid, to secure the due performance of the contract by your petitioners," &c.

The foregoing evidence and statements of the claimants satisfy me that they never sold, nor intended to sell, said goods to the government; but that they only transferred the goods to the government as *collateral security* for the money advanced on the contract.

But it is said that the act of Congress of January the 31st, 1823, (3 Stat. at Large, 723,) prohibited said advance payment and the taking of the goods into possession as collateral security for the advance. All that needs be said on that subject is this: If the transaction was legal, the goods continued to be the property of the claimaints; the United States having a lien on the goods for the advance payment. If the transaction was illegal, it was void; and the goods continued to be, as they previously were, the property of the claimants. So that, whether the transaction was legal or not, it did not change the ownership of the goods. The point being settled that the absolute property in the goods in question was always in the claimants, from the time they left Baltimore until they were lost by shipwreck on the Oregon coast, there is no difficulty in the question as to who must bear the loss.

After the arrival of the goods at San Francisco, it became the duty of the collector of the customs there, by virtue of the agreement of the 30th of April, 1852, to take ordinary care of the goods, and, on request of the claimants, to ship them, or such part of them as circumstances required, in a revenue cutter or other vessel, to the places at which they were to be used. The collector accordingly entered into the following charter-party with the claimants:

"This charter-party, made and concluded upon in the city of San Francisco, the 8th of February, 1853, between Francis X. Kelly and Francis A. Gibbons, owners of the barque "Oriole," of the city of Baltimore, of the burden of two hundred and twenty-three tons, or thereabouts, register measurement, now lying in the harbor of San Francisco, in the State of California, of the first part, and Beverly C. Sanders, collector of the port of San Francisco, acting on behalf of the government of the United States, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, do covenant and agree on the freighting and chartering of the said vessel to the said party of the second part, for the conveyance of materials for light-houses to Monterey, Point Conception, San Diego, the Faralones, Humboldt bay, the mouth of Columbia river, and such other points as may be designated by the said party of the second part, or by the duly authorized agent of the United States government, on the terms following, that is to say:

"*First.* The parties of the first part do engage that the said vessel, in and during the time she shall be thus employed, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such service.

"*Second.* The said parties of the first part do engage further to convey and provision such agents of the government, and such artizans and operatives as may be necessary to be transported with the materials, for the purpose of erecting the light-houses to be constructed.

"*Third.* The said parties of the first part do engage further to take and receive on board said vessel, during the continuance of this charter, all such materials as may be shipped by the party of the second part, or the duly authorized agents of the United States government.

"*Fourth.* The said parties of the first part do engage further to land and deliver the materials, operatives, and artizans aforesaid, at the points which may be selected as the sites for the light-houses by the duly authorized agents of the United States government.

"*Fifth.* The said parties of the first part do engage further that this charter is to continue until the whole of the materials are transported to the sites where the light-houses are to be erected, and is to terminate as soon as all the materials are delivered in pursuance of its requirements: *Provided, however,* that this charter shall be approved by the Secretary of the Treasury; and if it shall not be approved by the said Secretary, then it shall cease and terminate on the day when notice of the disapproval of the said Secretary shall be received by the said parties of the first part, or either of them, or on such day as the said Secretary shall designate after the receipt of the notice by the parties of the first part.

"And the said party of the second part, on behalf of the United States government, for and in consideration of the covenants and agreements to be kept and performed by the said parties of the first part, does covenant and agree with the said parties of the first part to charter and hire the said vessel as aforesaid, and to pay to the said parties of the first part, or their agents, for the charter or freight of the said vessel during the time the said vessel may be engaged under this charter, the sum of 3,000 dollars for each and every month, payable monthly at the end of each and every month, it being understood and agreed upon that this charter shall commence from the day of the date hereof.

"To the true performance of all and every of the foregoing convenants and agreements, the said parties, each to the other, do hereby bind themselves, their heirs, executors, administrators, and assigns.

"In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

"FRANCIS X. KELLY. [L. S.]
"FRANCIS A. GIBBONS, [L. S.]
"By his attorney, WM. J. TIMANUS.

"In the presence of
"CYRIL V. GREY.

"BEVERLY C. SANDERS, [L. S.]
"*Collector.*"

In August, 1853, the "Oriole" sailed, under said charter-party, from San Francisco, bound to Cape Disappointment; the claimants having undertaken, by the charter-party, *to convey the goods to the designated points and land and deliver them there.* The vessel was lost by the perils of the sea, at the mouth of the Columbia river, in Oregon, with the materials on board for the four light-houses not then erected. *Mr. Moore,* in charge of said materials, as agent of the government, was on board of the vessel at the time she was lost. The absolute

property of the goods at the time of their loss was, as before said, in the claimants, who had pledged them to the United States as security for the advance payment of 35,000 dollars.

The question for examination upon the aforesaid facts is, whether the loss of said light-house materials is to be borne by the United States or by the claimants?

I have already copied into this opinion the whole of the agreement of the 30th April, 1852, which relates to this question. The substance of that part of the agreement is, that the United States would transport said materials to San Francisco and deliver them to the collector there, free of charge to the claimants, in a revenue cutter or other vessel, or if the claimants transported the articles, the United States would pay the freight; and that the articles should remain in the collector's possession at San Francisco until transported under his authority, when required by the claimants, to the designated points, in a revenue cutter or other vessel. As the goods were carried safely to San Francisco, and were put under the control of the collector, no further notice need be taken of the agreement relative to that part of the case. The contest between the parties arises out of the agreement as to the carriage of the goods from San Francisco. The United States undertook, for a sufficient consideration, to carry the claimants' goods, when required by them, in a revenue cutter or other vessel, from San Francisco to certain other points on the Pacific coast. One of those points was Cape Disappointment, near the mouth of the Columbia river. The United States, as to this affair are not to be considered as common carriers. There is no pretence that they were common carriers, they not being bound, by law, to carry goods generally. They are to be considered, under said agreement, as private carriers for hire. The consideration for the undertaking to carry the goods is to be found in the execution, by the claimants, of said agreement. A late writer describes the difference between the liability of a common carrier and a private carrier for hire, as follows:

"The difference with respect to the degree of liability between a *private* carrier for hire and a *common* carrier (whose undertaking is always for hire) is, that the latter is bound to deliver the goods instrusted to him against *all events* but the acts of God and the public enemy. The responsibility which is founded merely upon the reward, is not incurred when a certain degree of diligence has been used, whereas that which is imposed by the common law upon the common carrier, is derived mainly from his public imployment, and is not avoided by any quantity of diligence. * * * * * * * * *Ordinary diligence*, to which a private carrier for hire is bound, is such diligence as every prudent man commonly takes of his own goods, and *ordinary negligence* is therefore the want of such diligence."—(Angell on Carriers, sec. 67.)

Considering the United States, in this case, as private carriers of the claimants' goods for hire, as in my opinion they must be considered, they are not liable to the claimants for the loss of the goods, unless it be proved that the loss occurred from the want of *ordinary diligence* on the part of the government.

Now, there is not the slightest evidence of the want of ordinary *diligence by the* government in the carrying of the goods from San

Francisco. The collector there was the agent of the government for the management of this business. There being no public vessel at the time at San Francisco to carry the goods, the claimants' agent proposed to the collector the chartering of the "Oriole," the claimants' vessel. That proposition was accepted by the collector, and the aforesaid charter-party was accordingly executed. There was surely no want of ordinary diligence on the part of the government in that transaction. The claimants thereby agreed to convey in the "Oriole" the said materials for certain light-houses to, among other places, the mouth of the Columbia river. The claimants also agreed, by the charter-party, that the vessel should be kept tight, staunch, &c.; that they would convey and provision such agents, &c., as might be necessary to be transported with the materials, &c.; that they would receive on board all such materials as might be shipped by the United States, &c.; that they would land and deliver the materials, &c., at the sites for the light-houses, &c. For which service, the United States agreed to pay the claimants $3,000 a month.

It is difficult to conceive how a more favorable arrangement for the claimants as to the carrying of their goods (which the United States had agreed to carry in a revenue cutter or other vessel) could have been made. No want of ordinary diligence in the matter can possibly be imputed to the United States. They placed the claimants themselves, by the charter-party, under the same liabilities that the United States were, for the carrying of the goods, namely, the liabilities of private carriers for hire.

In August, 1853, the "Oriole" sailed, under said charter-party, with the materials for some of the light-houses on board; but when she arrived near Cape Disappointment, one of the light-house sites, she and all the materials on board were lost by the perils of the sea, without the fault of any person whatever. The consequence of this shipwreck was, that the claimants lost their goods, and the United States lost their lien, if they had any, on them, for the advance payment of $35,000. That being the case, the claimants have no ground for the charge against the United States for the $10,558, the value of the materials lost by the shipwreck. Neither have the claimants any ground for the charge for the materials, if any, furnished by them after the shipwreck, to supply the place of those which were lost; because they were bound to furnish all the materials for the light-houses, and, of course, when any of the materials were lost, without the fault of the government, the claimants were bound to supply the loss.

I dissent, also, from that part of the judgment of the court which allows the claimants the sum of $5,811 54 for the failure of the United States to deliver the materials at Cape Disappointment. This sum is allowed by the court as damages which arose to the claimants in consequence of the aforesaid loss of the materials over and above their value. But if, as I have endeavored to show, those materials belonged to the claimants, and they were bound to bear the loss, it follows, of course, that any subsequent damage suffered by the claimants in consequence of that loss must also be borne by them. The government, not being liable for the non-delivery of the materials lost, cannot be liable for any damage which may have ensued to the claimants in consequence of the non-delivery.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 246.

IN THE SENATE OF THE UNITED STATES.

JULY 25, 1856.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany Bill S. 408]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Joseph D. Beers, report:

That they have examined the opinion and evidence submitted to the court in this case, and agree with the court, that the United States ought to afford the relief provided in the bill submitted by the court. The opinion of the court is hereto annexed.

JOSEPH D. BEERS *vs.* THE UNITED STATES.

The opinion of the court was delivered by SCARBURGH, J.

On the 21st day of January, A. D. 1850, Thomas B. Nalle, a purser in the navy of the United States, in pursuance of instructions from the Navy Department, and by the command of Thomas Ap C. Jones, commander-in-chief of the Pacific squadron, drew a bill of exchange on William Ballard Preston, Secretary of the Navy, for twenty thousand dollars, payable to the order of Thomas Ap C. Jones, commander-in-chief of the Pacific squadron, three days after sight. This bill was endorsed by Thomas Ap C. Jones to Moffatt & Co., or order, who endorsed it to the order of the petitioner.

On the 5th day of April, A. D. 1850, the petitioner presented the bill to William Ballard Preston, Secretary of the Navy, at the Navy Department, for acceptance. On the 9th day of April, A. D. 1850, a clerk in the department wrote on the face of the bill, in red ink, "paid by requisition No. ——." On the 10th day of April, A. D. 1850, the bill was returned to him, with the remark, that "the department declines to honor it."

On the 9th day of May, A. D. 1850, in answer to a letter of the preceding day, the department informed the petitioner "that no advice had been received from California relative to the draft of Purser Nalle." On the 14th day of June, A. D. 1850, similar information was given him by the department. On the 9th day of August, A. D. 1850, the petitioner was informed that the department had decided to pay the draft of Purser Nalle, and it was accordingly paid on that day, and the bill was taken up by the Navy Department.

See the letter of Hon. J. J. Crittenden, Attorney General, to Hon. William A. Graham, Secretary of the Navy, dated November 14, A. D. 1851, a copy of which is on file among the papers of this case.

The petitioner now claims fifteen *per centum* on the amount of the bill for re-exchange and interest. The rate of commercial damages upon protested bills of exchange in California in the year 1850 was, on inland bills fifteen *per centum*, and on foreign bills twenty *per centum*. The bill was drawn in California. (See depositions of Wm. M. Burgoyne and Samuel Ward, and the letter of the attorney general already referred to.)

That the United States, by their authorized officers, were parties to the bill in question, both as drawers and drawees, is indisputable. It is stated by the Attorney General, that it was drawn by the purser, under instructions from the Navy Department, and by the command of the commander-in-chief of the Pacific squadron, on the Secretary of the Navy. The doctrine appears to be well settled, that when the United States, by their authorized officer, become a party to negotiable paper, they have all the rights and incur all the responsibility of individuals who are parties to such instruments. There is no difference, except that the United States cannot be sued. (United States *vs.* The Bank of the Metropolis, 15 Peters R., 377.) In that case the court say: "It [the Supreme Court] said in the case of The United States *vs.* Dunn, 6 Pet., 51, 'the liability of parties to a bill of exchange, or promissory note, has been fixed on certain principles, which are essential to the credit and circulation of such paper. These principles originated in the convenience of commercial transactions, and cannot now be departed from.' From the daily and unavoidable use of commercial paper by the United States, they are as much interested as the community at large can be in maintaining these principles."—(Ibid, 392.) It seems to be considered, too, that the United States are liable to damages, on a protested bill of exchange drawn by them, in the same manner and to the same extent as an individual.—(Bank of the United States *vs.* The United States, 2 How. R., 711.)

This bill, then, being drawn by the United States, their contract was, that the drawee should, on the bill being presented to him in a reasonable time from its date, accept the same, and, having so accepted it, should pay it when duly presented for payment according to its tenor.—(Whitehead *vs.* Walker, 9 Mees. & W., 506, 515.) On the refusal of the drawee to accept the bill, if it had been a case between individuals, a complete right of action on the bill against the drawer would have accrued in favor of the holder. But this right of action would, in general, be forfeited in such a case, by the failure to cause the bill to be protested for non-acceptance, and the notice of the non-acceptance and protest to be given to the drawer.—(Ibid.) This is the general rule; but there are exceptions to it. A protest is not required in the case of an inland bill, unless it is prescribed by the local municipal law. This, however, is the case of a foreign bill, and the protest cannot be excused on that ground. A protest affords satisfactory evidence of dishonor to the drawer, who, residing abroad, might experience a difficulty *in making* proper inquiries on the subject, and be compelled to rely on *the representation* of the holder. It also furnishes an endorsee with

the best evidence to charge an antecedent party abroad; for the protest is evidence in all courts of the dishonor of the bill. (Byles on Bills, 189; Story on Bills, § 277.) It seems to be necessary, therefore, only where the object is to charge the drawer, and he might be prejudiced by the failure to make it. Hence, if the bill be drawn by the drawer without funds and without having any right to draw, the want of a protest will not prejudice the holder; but he will be entitled to recover against the drawer, upon the ground that he has not, and could not, sustain any loss or injury thereby. (Story on Bills, § 280.) And so, a promise to pay the bill, after a full knowledge of the fact that no protest has been made, will, it is said, be a waiver of the objection by the party, and he will be held bound in the same way and to the same extent, as if there had been a regular protest. (Ibid.)

The same doctrine is applicable to the subject of notice. It seems to be necessary only where the object is to charge the drawer, and he might be prejudiced by the failure to give it. If, therefore, the drawer has no right to draw the bill, or no reasonable ground to expect the bill to be accepted, he is not deemed entitled to notice of the dishonor thereof, for it was his own fault to draw it; and he cannot be said to have suffered any loss by the want of notice. Hence, if the drawer draws the bill without having funds in the hands of the drawee, or expectation of funds, or any arrangement or agreement on the part of the drawee to accept the bill, he will not be entitled to notice, and not be discharged by the want thereof. (Story on Bills, sec. 311.)

It seems to be a principle fairly deducible from the authorities upon this subject, that, as between the holder and drawer, protest and notice may be dispensed with, where they must be unnecessary or immaterial to the drawer; where the drawer could sustain no injury by the neglect of the holder to make a protest, or give him notice of the dishonor of the bill; where the want of them could not possibly affect the drawer. (French *vs.* The Bank of Columbia, 4 Cranch R., 141; Dickens *vs.* Beall, 10 Peters R., 572.) The rule, therefore, which requires a protest and notice, in order to charge the drawer, is not one of positive law, but it is founded in reason and the necessities of commerce. It requires notice and protest, not merely as an indemnity against actual injury, but as a security against a possible injury which may result from the *laches* of the holder of the bill. (Ibid.) Hence, it is a general rule, but cases which do not come within the reason of the rule form exceptions to it. In this case the United States were both drawers and drawees, and their interests could in no conceivable way be affected by the want either of a protest or of notice. There was no party to the bill in any way responsible to them, and their interest could not by possibility have been prejudiced by the failure to make a protest or give notice of the dishonor. It seems to us, therefore, that a protest and notice would have been wholly superfluous. There was no conceivable object to be accomplished by them.

Upon the dishonor of the bill, then, the United States, as drawers of the bill, became liable to the holder for the principal sum, and interest, and damages, and expenses incurred by the dishonor, and this liability was not lost to the holder by his failure to have the bill protested, *and to give notice of its* dishonor. (Story on Bills, sec. 399.) The

principal sum has been paid, but the liability of the United States for the interest and damages was absolute and complete at the time of its payment, and the mere surrender of the bill is insufficient to discharge that liability. It is neither a release nor a payment, nor in any sense a satisfaction. The liability, therefore, still exists. The damages in lieu of re-exchange are to be ascertained by the law of the place where the bill was drawn, and the interest by the law of the place where the money was payable.

Amount of bill - - - - - - - - -	$20,000 00
Interest thereon from the 11th day of April, A. D. 1850, to the 9th day of August, A. D. 1850; 3 months 29 days, at 6 *per centum* - - - - - - - -	396 66
	20,396 66
Add damages at 15 *per centum* - - - - - -	3,000 00
	23,396 66
Deduct payment of principal - - - - - - -	20,000 00
	3,396 66

We shall, therefore, report to Congress a bill in favor of the petitioner for the sum of three thousand three hundred and ninety-six dollars and sixty-six cents, with interest thereon from the 9th day of August, A. D. 1850, till paid.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM No. 247.

IN THE SENATE OF THE UNITED STATES.

JULY 25, 1856.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany Bill S. 409.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Thomas M. Newell, report:

Upon a review of the case, the committee concur in the opinion of the court in favor of this claim hereto annexed, and recommend the passage of the accompanying bill.

Opinion of the Court by GILCHRIST, C. J.

THOMAS M. NEWELL *vs.* THE UNITED STATES.

Upon consideration of the act of Congress relating to the subject, and the letters of the Fourth Auditor, dated on the 8th January, 1852, and on the 7th of June, 1856, it is the opinion of the court that the United States owe the claimant the sum of fourteen hundred and fifty-five dollars, and we report a bill accordingly.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 248.

IN THE SENATE OF THE UNITED STATES.

JULY 29, 1856.—Ordered to be printed.

Mr. STUART submitted the following

REPORT.

[To accompany Bill S. 414.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Nathaniel Hayward, ask leave to submit the following report:

The petitioner represents that he is the original inventor of an important improvement in the manufacture of India rubber goods, his invention consisting in combining sulphur with India rubber; that pending his application for a patent he executed an assignment of his interest in said invention to Charles Goodyear; that on the 24th day of February, 1839, letters patent for said invention were issued to Charles Goodyear, as the assignee of the original inventor, for the period of fourteen years; that previous to the expiration of said term he (Hayward) applied to the Commissioner of Patents, praying that the patent for his invention should be extended for his benefit; that in pursuance of the provision of the law, he exhibited to the Commissioner an account, under oath, that the whole sum received for the sale of his invention was $3,000, and that after deducting from this amount the sum of $1,825 75 for his expenses and time in perfecting and in experimenting and introducing his invention, the total benefit he has received from his invention is the sum of only $1,174 25, and that the Commissioner erroneously refused to extend said patent.

The first point which engaged the attention of the committee was the character of the invention claimed by Mr. Hayward. The specific language of the claim is "combining sulphur with gum elastic, either in solution or in substance, either in the modes pointed out or in any other that is substantially the same, and which will produce the same result." Full information in relation to the character of this invention is furnished from an official and high scientific source. The law requires that upon filing a petition for an extension, the Commissioner shall refer the case to a principal examiner, whose duty it is to make a full report of the case, and particularly whether the invention was new and patentable when made. An elaborate report was made by the examiner in this case. It appears from his report that previous to Hayward's invention, the universal experience in India rubber goods was that they were dried with difficulty, and even when once dried, that they would often become sticky by being folded to-

gether, so that parts lying in contact would become cemented together. In other cases, the goods became soft and sticky, simply from exposure to changes of temperature. Hence, all of the companies formed previous to the date of this patent were broken up and ruined upon the defects here named. Various mechanical dryers had been used to overcome these defects with little effect. In November, 1838, Mr. Hayward, having ascertained by experiments that there is a chemical attraction between India rubber and sulphur, by which a compound of these materials dries rapidly, made an application for letters patent, basing his claim upon the drying powers of this mixture. This discovery, which was the result of many experiments and much expense and labor, has worked an entire revolution in the manufacturing of elastic goods. It was the discovery of a new material in the arts as original as that of India rubber itself, and as distinct from either of the substances, India rubber and sulphur, as water is from hydrogen and oxygen, of which it is composed. Not India rubber alone, but India rubber and sulphur chemically combined, so as to make a new substance, having new properties different from either of its component parts, and destined thenceforth to be the material from which water-proof and elastic goods were to be mannfactured.

The next subject of inquiry with the committee was the circumstances under which Mr. Hayward parted with this valuable invention for so paltry a price. These circumstances are stated with great simplicity and evident truthfulness in an affidavit before the committee. Mr. Hayward states that he commenced the manufacture of certain descriptions of India rubber goods in 1835. For the first three or four years the business was very uncertain, on account of defects in the articles (before described.). The value of the goods he made was not more than two thousand dollars per year, and the profits not more than three or four hundred a year. The difficulties which he labored under led him to see that the only hope of making the business profitable was in overcoming the defects of the goods. For this purpose he continued experiments from 1836 to 1839, combining India rubber with every substance he could think of. When he succeeded in making the invention of the combination of India rubber and sulphur, he hired the shop he worked in. The only property he owned, except his household furniture and clothing, and stock and tools in trade, was the house he lived in, worth about $1,200; upon this there was a mortgage of about $700. His only income was the uncertain profits of his business, not $500 a year, out of which he had to support himself, his wife, and two children. Under these circumstances, it is plainly to be perceived that the parting with his invention for so inconsiderable a sum was a matter of compulsion. In the future manufacture of India rubber goods, the invention soon became perfectly successful, and was the foundation of that most important branch of American manufactures—so distinguished for the wonderful variety and perfection of its goods—and which may be justly styled the most characteristic of American arts.

The next question presented to the committee is, whether the Com*missioner of* Patents was justified by the facts in this case and the *rules prescribed* by law to govern him in his decisions in refusing the

extension of Hayward's patent. The patent laws provide that the Commissioner of Patents shall grant or refuse an extension of a patent as the case may, or may not, satisfy the following requisites:

1st. Is the invention novel?

2d. Is it useful?

3d. Is it valuable and important to the public?

4th. Has the inventor been adequately remunerated for his time, ingenuity, and expense in originating and perfecting his invention?

5th. Has he used due diligence in introducing his invention into general use?

The committee are of opinion, that upon the facts shown in this case as to each of the above points, the Commissioner was bound in law to extend Mr. Hayward's patent.

The report of the principal examiner is conclusive as to the first three requisites—novelty, utility, and value. The inadequacy of the remuneration is sufficiently shown by the statements before made as to the value of the invention and the amount received for the same. In making his determination upon this branch of the case, the Commissioner fell into a grave error. It appeared at the hearing that after the sale of his invention Mr. Hayward had from that time forward been employed as the foreman in an establishment called in honor of his invention the "Hayward Rubber Company," and that by his economy and unremitting labor in that business he had acquired some property. The Commissioner decided that although Mr. Hayward had received this mere trifle from the sale of his invention, yet he was not entitled to the privilege secured by law to an inventor, because he had made money in a branch of the same business.

The committee are totally at a loss to conceive the scope of this argument. It would seem to be clear that if Mr. Hayward had received but $1,174 25 from the sale of an invention which has proved of inestimable value to the public, that his right to the usual privilege accorded by law to those who have not been adequately rewarded is incontestable. How strange an answer to his claim is the argument: I acknowledge the value of your discovery, that the public has been largely benefited by its use, and that you were compelled by poverty to sell it for a trifle; but granting that you made nothing out of that invention, you have been fortunate in your labors since. Therefore, the success of your industry since 1838 shall be the reason for refusing a reward for your industry and invention before 1838.

The sixth requisition, that the inventor shall establish that he has used due diligence in introducing his invention into public use, is sufficiently met by the fact that the invention is in general use among manufacturers.

The committee are of opinion that the case submitted by Mr. Hayward satisfies all the conditions of the law for extensions, and that he failed to receive the benefits of the law through the errors of the officer appointed to administer it. He has thus suffered a wrong for which it is true the law provides no remedy, although one is demanded by every principle of common justice, and by all the analogies of practice in judicial proceedings. If the Commissioner has been in error, it is, *in the opinion* of the committee, the duty of Congress to

reassume the power which the Constitution has given it for the benefit of the inventor, and to correct the judgment of the officer to whom it has delegated its power.

Assuming that the Commissioner's decision was erroneous in fact and in law, the committee conceive that by granting him an extension of his patent Congress will grant him no special privilege, but simply the rights to avail himself of the general provisions of law which apply to all inventors who have been not adequately rewarded for their inventions.

The committee would observe, that immediately upon the refusal of the Commissioner to grant an extension, Mr. Hayward made application to Congress, the only correcting power, for a reversal of the erroneous decision, but he has never been able, heretofore, to obtain a report or vote on his case in either House.

It is important also to observe, that although Mr. Hayward's application has been so long before Congress, and the fact of his having so applied was made known through the public prints, no objection or remonstrance has been presented against the extension of his patent. It may, therefore, be fairly presumed that the extension of this patent will be entirely consistent with a due regard to the public interest.

The committee therefore report the accompanying bill, calling special attention to the fact that careful provision has been made that any persons who may have embarked in this business since the expiration of the former patent shall be protected, and that all their vested rights shall be preserved.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 249.

IN THE SENATE OF THE UNITED STATES.

JULY 29, 1856.—Submitted and ordered to be printed.

Mr. MALLORY made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Hans Nelson, alias Hans Krutzon, praying to be allowed the pay due him as a seaman in the navy of the United States, have had the same under consideration, and report:

That they find a report made on the merits of this case at the 1st session of the 32d Congress, which your committee make a part of this report:

IN SENATE, *June* 7, 1852.

Mr. GWIN made the following report:

The Committee on Naval Affairs, to whom was referred the memorial of Hans Nelson, alias Hans Krutzon, praying to be allowed pay due him as a seaman in the navy of the United States, have had the same under consideration, and report:

That there is nothing accompanying the petition in the nature of proof, and it is stated that no evidence of service can be furnished by the Navy Department. The claim rests solely upon the bare statement of the claimant. The committee therefore ask to be discharged from its further consideration.

Your committee see nothing in the additional testimony filed by the memorialist since the foregoing report was made to alter or modify its conclusions, and they therefore recommend that the prayer of the petitioner be rejected, and that they be discharged from the further consideration thereof.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 250.

IN THE SENATE OF THE UNITED STATES.

JULY 29, 1856.—Submitted and ordered to be printed.

Mr. MALLORY made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of J. P. Milton, asking compensation for extra services as commandant's clerk at the navy yard, Memphis, have had the same under consideration, and report:

That, upon reference of said memorial to the Secretary of the Navy, the following reply was received:

NAVY DEPARTMENT, *July* 25, 1856.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st instant, enclosing the memorial of J. P. Milton, and asking the views of the department as to Mr. Milton's claim to be compensated for "extra services as commandant's clerk at the navy yard, Memphis."

The information in the possession of the department is such that it would not be justified in recommending the claim to favorable consideration. The paper is returned.

I am, respectfully, your obedient servant,

J. C. DOBBIN.

Hon. S. R. MALLORY,
Chairman Committee of Naval Affairs, U. S. Senate.

Your committee concur in the views of the department, as expressed in said letter, and recommend that the prayer of the petitioner be rejected.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 251.

IN THE SENATE OF THE UNITED STATES.

JULY 29, 1856.—Ordered to be printed.

Mr. MASON submitted the following

REPORT:

[To accompany Bill S. 405.]

Mr. Mason, from the Committee on Foreign Relations, to whom was referred the "Bill (S. 405) to provide for carrying into effect the first article of the treaty between the United States and her Majesty the Queen of the United Kingdom of Great Britain and Ireland, of the 15th day of June, one thousand eight hundred and fifty-six," submitted the following:

DEPARTMENT OF STATE,
Washington, February 18, 1856.

SIR: I have the honor to invite your attention to that part of the President's last annual message in which an appropriation is recommended for the purpose of surveying and marking the boundary between the Territory of Washington and the contiguous British possessions.

The letter of the department to Mr. Hunter, chairman of the Committee on Finance of the Senate, of the 15th of July, 1854, a copy of which and of the estimate to which it refers are herewith enclosed, will serve as data for the appropriation. The expediency of an appropriation, without any delay which can be avoided, is further manifest from the note of Mr. Crampton to the department of the 9th instant, a copy of which is also herewith transmitted.

I have the honor, &c.,

W. L. MARCY.

Hon. JAMES M. MASON,
Chairman of the Committee on Foreign Relations, Senate.

DEPARTMENT OF STATE,
Washington, July 15, 1854.

SIR: I transmit a copy of a letter of the —— instant, which I addressed to the Secretary of the Interior, upon the subject of a demarcation of the boundary between the United States and the British possessions on the northwest, pursuant to the treaty of 1846. It is

understood that Governor McClelland referred the letter to Mr. Robert B. Campbell for an estimate. A transcript of Mr. Campbell's letter to the Department of the Interior, and of the accompanying estimate, are also herewith transmitted, and I have the honor to request that an appropriation for the purpose may be made at this session of Congress. It is believed that a sum of fifty thousand dollars, in addition to that mentioned in the estimate, will be required for marking, under the direction of the Coast Survey, the line from the middle of the channel which separates the continent from Vancouver's island, and thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific ocean.

I have, &c.,

W. L. MARCY.

Hon. R. M. T. HUNTER,
Chairman of the Committee on Finance, Senate.

WASHINGTON, *February* 9, 1856.

SIR: I have been instructed by her Majesty's government to call the serious attention of the government of the United States to the unsatisfactory and hazardous state of things which continues to exist on the boundary which divides the Territory of Washington from the British possessions occupied by the Hudson's Bay Company; and her Majesty's government direct me to express their regret that their repeated remonstrances have not led to any measures which seem to have succeeded in restraining the acts of the authorities of that Territory.

I have already had the honor of addressing your department (in a note to Mr. Hunter) on the 27th of July last, respecting the depredations committed on the property of the Hudson's Bay Company in the island of San Juan, by Mr. Ellis Barnes, sheriff of Whatcom county, Washington Territory, in virtue of an alleged claim for taxes due to the authorities of the Territory; and I have now the honor to enclose the copy of a further letter from the governor of the Hudson's Bay Company, together with accompanying documents in regard to the same matter—from which it appears that no reparation whatever has been made to that company for the heavy losses which they incurred on that occasion.

You will at once perceive, sir, that the occurrence in question has arisen out of the conflicting claims of the authorities of Vancouver's Island and of Washington Territory to the jurisdiction of the island of San Juan, as appertaining, under the provisions of the treaty between Great Britain and the United States, of 1846, to the dominions of their respective governments.

San Juan is one of the small islands lying in the gulf of Georgia, between Vancouver's island and the main land, and the question which has arisen between the parties regards the position of the channel through the middle of which, by the provisions of the treaty of 1846, *the boundary* line is to be run.

In the early part of 1848 I had the honor, by the instructions of her Majesty's government, to propose to the government of the United States to name a joint commission for the purpose of making out the northwest boundary, and more particularly that part of it in the neighborhood of Vancouver's island; in regard to which, as you will perceive from a reference to my note of the 13th January of that year to the honorable James Buchanan, the Secretary of State of the United States, her Majesty's government already foresaw the possibility of the occurrence of misunderstanding between the settlers of the respective nations; and her Majesty's government, moreover, then proposed, in order at once to preclude such misunderstandings, that before instructing their respective commissioners the two governments should agree to adopt as the "channel" designated by the treaty that marked by Vancouver in his charts as the navigable channel, and laid down with the soundings by that navigator.

Mr. Buchanan, entirely concurring in the expediency of losing no time in determining that portion of the boundary line, nevertheless felt some objection to adopting the channel marked by Vancouver as the "channel" designated by the treaty, in the absence of more accurate geographical information; and he suggested that the joint commissioners when appointed should be, in the first place, instructed to survey the region in question for the purpose of ascertaining whether the channel marked by Vancouver, or some other channel as yet unexplored between the numerous islands of the gulf of Georgia, should be adopted as the channel designated by the treaty, or, in other words, should be found to be the main channel, through the middle of which, according to the generally admitted principle, the boundary line should be run.

To this suggestion her Majesty's government, in the hope that immediate measures would be taken by the government of the United States to name commissioners to proceed to the spot with those already designated by the British government, made no objection.

It has been a subject of regret to her Majesty's government that, from causes upon which it is unnecessary to dwell, no appointment of commissioner has, up to the present time, been made by the government of the United States, and I am now instructed again to press this matter on their earnest attention.

Should it appear probable, however, that this proposal cannot be met by the government of the United States without further difficulty or delay, I would again suggest the expediency of the adoption, by both governments, of the channel marked as the only known navigable channel by Vancouver as that designated by the treaty. It is true that the island of San Juan, and perhaps some others of the group of small islands by which the bay of Georgia is studded, would thus be included within British territory; on the other hand, it is to be considered that the islands in question are of very small value, and that the existence of another navigable channel, broader and deeper than that laid down by Vancouver, by the adoption of which some of those islands might possibly fall within the jurisdiction of the United States is, according to the reports of the most recent navigators in that region, extremely *improbable; while* on the other hand, the continued exist-

ence of a question of doubtful jurisdiction in countries so situated as Washington Territory and Vancouver's Island is likely to give rise to a recurrence of acts of a similar nature to those to which I have had the honor of calling your attention, and which, I have no doubt, would not be less deplored by the government of the United States than by that of Great Britain.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

JOHN F. CRAMPTON.

Hon. W. L. MARCY, *&c.*, *&c.*, *&c.*

OLYMPIA, WASHINGTON TERRITORY,
Executive Office, May 12, 1855.

SIR: I have the honor to acknowledge the receipt of your communication of April 26, in which you state that information has been received by you to the effect that an armed party of American citizens, ostensibly acting under the direction of a person named Barnes, who styles himself sheriff of Whatcom county, landed on the island of San Juan, and demanded from Charles Griffin certain moneys in payment of taxes, on behalf and in the name of the United States of America, "a demand which, as a British subject, acknowledging no authority except that emanating from his own government, he refused to pay;" that Mr. Barnes and his followers "abstracted a number of valuable sheep, and that upon Mr. Griffin demanding restitution he was menaced with violence, and put in danger of his life."

Of the matters detailed by you I have no official information save from your communication. It is known, however, that Mr. Barnes is the sheriff of Watcom county.

You further state that you have called my attention to the same for the purpose of ascertaining "if the said Mr. Barnes' proceedings were in that instance authorized or sanctioned in any manner by the executive officer of Washington Territory."

The sheriffs of the various counties come under the supervision of the executive in the exercise of the pardoning power, and in the case of a resistance of the laws. They act under certain prescribed laws, and to these laws they are responsible for the proper discharge of their duty.

By the act of the legislative assembly of the Territory of Oregon, previous to the separation therefrom from the Territory of Washington, the boundary line as between the two governments was held to run through the Canal de Arro, and by the act of the legislative assembly of the Territory of Washington "to organize the county of Whatcom" the island of San Juan is included within the bounds of that county. The sheriff in proceeding to collect taxes acts under a law directing him to do so. Should he be resisted in such an attempt, it would become the duty of the governor to sustain him to the full force of the authority vested in him.

You say "the island of San Juan has been in the possession of British subjects for many years, and it is, with the other islands in the Archipelago de Arro, declared to be within the jurisdiction of the colony, and under the protection of British laws. I have also the orders of her Majesty's ministers to treat those islands as part of the British dominions."

The acts, before referred to, have declared these islands to be within the jurisdiction formerly of the Territory of Oregon, now of the Territory of Washington; and the general laws of those Territories, so far as they may be applicable, have thereby been extended over them.

The ownership remains now as it did at the execution of the treaty of June 11, 1846, and can in nowise be affected by the alleged "possession of British subjects."

The contemporaneous exposition of the treaty, as evinced by the debates in the United States Senate, shows the Canal de Arro to be the boundary line, as understood by the United States at that time, and the doubt of the British government as to any claim beyond that is plainly manifested by the note of Mr. Crampton, the British minister, to Mr. Buchanan, Secretary of State of the United States, dated January 13, 1848. Indeed, on Arrowsmith's map of Vancouver's Island and the adjacent coast, published in London, April 11, 1849, the boundary line is laid down as coming through the Canal de Arro.

The map is compiled from the surveys of Vancouver, Kellet, Simpson, and others, and would seem to establish that even as late as some three years subsequent to the treaty the great English navigators and hydrographers, as well as the American government, considered the Canal de Arro, as in the terms of the treaty, the channel which separates the continent from Vancouver's Island.

I shall take the earliest opportunity to send a copy of your communication and of this reply to the Secretary of State of the United States, and in the meantime I have to reciprocate most earnestly your hope that nothing may occur to interfere with the harmony and good feeling which should characterize the relations of neighboring States.

I have, &c.

ISAAC I. STEVENS,
Governor Washington Territory.

His Excellency J. DOUGLAS, Esq., *&c.*

FORT VICTORIA, *September* 28, 1855.

SIR: I have the honor of enclosing, herewith, a statement of the losses incurred by the Hudson's Bay Company, in consequence of the violent and unlawful intrusion of Sheriff Barnes, with the armed posse of Whatcom county, and the forcible seizure and carrying away from the island of San Juan of certain valuable stock sheep, in payment of taxes levied on behalf and in the name of the United States of America.

That unwarrantable act was committed on the 30th day of March

last, to the surprise of the British inhabitants, who were threatened with violence and put in danger of their lives by Sheriff Barnes and his followers. Under these alarming circumstances all business was for the time suspended, and the flocks dispersed and driven into the woods for safety, to the serious loss and detriment of the British inhabitants.

In my communication of 7th May last, I transmitted with Mr. Griffin's report a copy of a letter which I addressed to the governor of Washington Territory in respect to the outrage committed by Sheriff Barnes on that occasion, and I now herewith forward the answer to that communication, for the purpose of establishing the fact, through the avowal of Governor Stevens, that "Mr. Barnes is the sheriff of Whatcom county," and that, as such, he would have been supported by the whole authority of the executive in the act, as Mr. Stevens further declares that "it would become the duty of the governor to sustain him to the full force of the authority vested in him in proceeding to collect taxes, should he be resisted in such an attempt," even on the island of San Juan; and the reason given in defence of such a course on the part of the governor is, that "by act of the legislative assembly of the Territory of Washington to organize the county of Whatcom, the island of San Juan is included within the bounds of that county." It appears by that extract of Governor Stevens' letter that he takes for granted that the acts of the legislative assembly of the Territory of Washington confers on the United States a substantial right to that part of the British dominions; and, moreover, that enforcing the payment of taxes levied on behalf of the United States on British subjects there residing, is a part of the proper duties of the executive officer of that government—a principle which I conceive to be false and dangerous in its operations.

The amount of damages claimed from the United States, as you will observe by Mr. Griffin's statement, is £2,990 13s.—a moderate estimate of the losses inflicted, and much less than a court of law would in such cases award to the sufferers.

I have, &c.,

J. DOUGLAS.

W. J. Smith, Esq., *&c.*, *&c.*, *&c.*

Statement and valuation of sheep, the property of the Hudson's Bay Company, forcibly seized and carried off on March 30, 1855, *by Ellis Barnes, sheriff of Whatcom county, Washington Territory, aided and assisted by the armed posse of said county, in the name and behalf of the United States of America; and of losses resulting from the violent acts of the said Ellis Barnes, in consequence of the flocks being driven into the woods and there destroyed by beasts of prey, and through other causes.*

	£	s.	d.
Carried off by Sheriff Barnes and posse of Whatcom county:			
12 choice Southdown rams, at £20	240	0	0
8 Cheviot rams, at £20	160	0	0
6 Leicester rams, at £25	150	0	0
8 Merino rams, at £25	200	0	0
Number of sheep missing in consequence of the flocks having been driven into the woods:			
156 Southdown ewes, at 33*s*. 4*d*	260	0	0
63 Southdown lambs, at 15*s*	47	0	0
86 Cheviot ewes, at 33*s*. 4*d*	143	6	8
23 Cheviot lambs, at 15*s*	17	5	0
25 Leicester ewes, at 33*s*. 4*d*	41	13	4
56 Merino ewes, at 50*s*. 6*d*	141	8	0
Cost of collecting and resorting flocks:			
Hire of 10 men for 8 days, at 12*s*. 6*d*. per diem	50	0	0
Hire of steam vessel Beaver for protection of property under my charge	500	0	0
Pay of 8 men for 8 days, hired to protect the property in my charge, at 12*s*. 6*d*. per diem	40	0	0
Incidental losses through derangement and suspension of business in consequence of Sheriff Barnes' violent acts	1,000	0	0
Total	2,999	13	0

CHARLES J. GRIFFIN.

SAN JUAN, *July* 26, 1855.

I hereby certify that this is the signature of Charles John Griffin, and that he is a person worthy of credit.

JAMES DOUGLAS,
Governor of Vancouver's Island.

HUDSON BAY HOUSE, *December* 6, 1855.

MY LORD: With reference to the deputy governor's letters of the 11th and 24th of July, and Mr. Hammond's replies of July 13th and August 2d, I have now the honor to enclose a copy of a letter just received from Mr. Douglas, governor of Vancouver's island, dated Victoria, September 28, 1855, covering an account of the damage caused to the Hudson's Bay Company by the unjustifiable proceedings of the United States authorities in the isle of San Juan, together with a copy of the further correspondence on the subject between Mr. Isaac Stevens, governor of Washington Territory, and Governor Douglas. I have to beg that your lordship will call upon the government of the United States to reimburse the Hudson's Bay Company for the illegal acts of their officers. I have, &c.,

A. COLVILE, *Governor*.

Earl of CLARENDON, K. G., &c., &c., &c.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 252.

IN THE SENATE OF THE UNITED STATES.

JULY 30, 1856.—Ordered to be printed.

Mr. COLLAMER made the following

REPORT.

[To accompany Bill S. 417.]

The Committee on the Post Office and Post Roads, to whom was referred the petition of Jacob Hall, make the following report:

Jacob Hall, in 1854, contracted to convey the mail from Independence, Missouri, to Santa Fé, New Mexico, for four years, at the compensation of $10,990 per annum. The Indians on this route were then at peace. Soon after, they became hostile, and have continued in that state with each other and making depredations on the whites to this time. Mr. Hall has performed his service with great efficiency, but has been compelled, in consequence of this condition of the Indians, very greatly to increase his force for the service at greatly increased expense, to an amount, as shown, of much more than double his compensation, and has suffered great loss.

In 1855, Congress, in view of these considerations, increased his pay to $22,000 for the year ending August, 1855, at the same time providing that the Postmaster General might, with the consent of said Hall, annul his contract The difficulties continuing, said Hall applied to the Postmaster General to annul the contract. But he, in view of the public service, declined to do it, and said Hall has continued, with great difficulty and expense, to perform the service.

The committee are of opinion that said Hall should receive for this service and for his losses the same amount for the year ending August 18, 1856, as was allowed him by Congress for the previous year and on the same condition ; and they report a bill accordingly.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 253.

IN THE SENATE OF THE UNITED STATES.

AUGUST 1, 1856.—Ordered to be printed.

Mr. GEYER made the following

REPORT.

[To accompany Bill S. 420.]

The Committee of Claims, to whom was referred the memorial of Anthony S. Robinson, only surviving son and heir of Dr. John H. Robinson, deceased, report:

This was originally a claim against the government of Mexico for compensation for military services, and is alleged to be embraced by the terms of the treaty of Guadalupe Hidalgo, for the payment of which the government of the United States became responsible.

The 14th article of that treaty provides that "The United States do furthermore discharge the Mexican republic from all claims of the citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty." And the 15th article provides that "The United States, exonerating Mexico from all demands on account of the claims of their citizens, mentioned in the preceding article, undertake to make satisfaction for the same," &c.

The claim was presented to the board of commissioners on Mexican claims, and was rejected on the ground that "the board refused to recognize as valid a claim founded solely on military services rendered to a foreign government."

The board lay down the following rule as the law applicable to this class of cases, viz: "When citizens of the United States leave their own country and enter into the service of another, they thereby voluntarily renounce their allegiance, and with it relinquish their right to the protection of the government under which they were born. They are to be regarded as citizens of the country of their adoption, and in whose service they were employed."

The memorialist takes exception to these principles thus laid down and acted upon by the board as inconsistent with the well settled rules of law, as a violation of the plain provisions of the treaty, and as unjust and oppressive to himself and others.

The decision of the question thus in issue will dispose of the case.

It appears from a letter of the Secretary of State to the chairman of the committee, in answer to inquiries, that the facts of the case, as *embodied in the memorial*, are substantially the same as they appear

upon the records of the board of commissioners, viz: that the said John Hamilton Robinson was a citizen of the United States, and in the beginning of the year 1815, taking a deep interest in the independence of Mexico, he entered the military service of that country, and, in pursuance of a decree of their Congress, he was duly commissioned a brigadier general in the Mexican army, in which capacity he continued in the faithful discharge of his duties until the time of his death, which occurred in 1819, and that he received no compensation for said services or for the losses incident to them, "although by the agreement of the Mexican authorities and the subsequent legislation of the Mexican government he was fully entitled to the same."

To show the intention of General Robinson to return to the United States and retain his character as a citizen thereof, in addition to the fact stated in the memorial that he was so designated in his commission, evidence is submitted that his family continued to reside at Natches, in the State of Missi sippi, and that General Robinson, although still in the Mexican service, returned to Natches, where he died, and letters of administration were granted on his estate, as "late of said county." The committee are therefore of opinion that, at the time of his death, he was a citizen of the United States, and that he had a just claim against the government of Mexico for personal services rendered under an express contract. It does not arise out of any tort on the part of the Mexican authorities, and could not therefore be the subject of complaint from one government against another; and it is not usual for governments to interpose to enforce the performance of civil contracts between their own subjects and a foreign state any more than it would if the contract were with the private citizens or subjects of such state. In the absence, then, of any law or treaty which would have the effect to make these claims an exception to the general rule, the committee would concur with the board in rejecting the claims, although upon grounds differing from those upon which they have placed their decision.

The treaty of Guadalupe Hidalgo was not exclusively a treaty to adjust the differences and liquidate the wrongs which either government had charged against the other, but it embraced, as a substantive and important feature, the purchase and sale of property and the payment and receipt of money and its equivalents. By its terms, the United States exonerated Mexico from all debts and liabilities due from that government to citizens of the United States, and contracted to liquidate and pay the same, in consideration of three and a half millions of dollars, a portion of the purchase-money, for territory acquired.

If General Robinson was a citizen of the United States, having a just claim against the government of Mexico, it is not perceived how his heirs can be justly and equitably denied payment. The position assumed by the board of commissioners was, that they would not "recognize as valid a claim founded solely on military services rendered to a foreign government." That such service would constitute a just claim against the government to which it was rendered cannot be doubted, whether performed by a citizen, or an alien—and there is nothing in the treaty excluding claims of that character. It is

true that the 15th article of the treaty provides that the awards of the board "shall be final and conclusive;" but, although this might be interposed as a bar to the recovery of a judgment in a court of law, it is not presumed that Congress would be disposed to assign it as a reason for avoiding an equitable and otherwise just and legal responsibility, especially as a considerable portion of the three and a quarter millions of dollars still remains in the treasury.

This claim appears to have been before the mixed commission under the treaty of 1839, and favorably considered by the American commissioners, but ruled out by the umpire as not being within the cognizance of the board.

As the committee have not before them the evidence showing the amount of service rendered, whether any compensation was made or what amount is due, they have come to the conclusion to report a bill to refer the case to the First Comptroller of the treasury, with authority to examine, audit and adjust the claim under the principles laid down in the treaty of Guadalupe Hidalgo, and to pay the amount, if any be found due, according to the stipulations of said treaty, out of any money in the treasury not otherwise appropriated.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 254.

IN THE SENATE OF THE UNITED STATES.

AUGUST 1, 1856.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany Bill S. 421.]

The Committee on Pensions, to whom was referred the memorial of citizens of Michigan, praying that the pension granted to the Hon. Thomas Fitzgerald be extended to his children, beg leave to report:

That Thomas Fitzgerald, an invalid pensioner, on account of having lost the use of his right arm in the war of 1812, died from the effects of a fall in 1854, from which he would have escaped, had he not been disabled as stated. The memorial before your committee sets forth these facts, and prays that the pension of eight dollars per month, granted to Thomas Fitzgerald, be extended to his children during their minority. Your committee, considering the demand a just one, recommends the passage of the accompanying bill.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 255.

IN THE SENATE OF THE UNITED STATES.

JULY 17, 1856.—Submitted.
JULY 24, 1856.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany Bill S. 387.]

The Committee on Post Offices and Post Roads, to whom was referred the memorial of the citizens of Apalachicola, in the State of Florida, beg leave to report:

Your committee have carefully and thoroughly considered the said memorial, and the exhibits accompanying the same, asking an appropriation for their mails, and setting out the grounds and reasons of the application.

In addition to the said memorial, your committee received from the Postmaster General two other petitions which had been submitted to him, bearing upon and relating to the same subject, which are herewith submitted—the one, a petition from the citizens of Bainbridge, Georgia; the other from New York, signed by many of the merchants and underwriters of said city.

These two petitions unite in urging the request of the memorialists, and the three united urge the subject as demanded alike by the commercial importance of the city of Apalachicola, and the constant intercourse and large trade existing between said port and the city of New York.

Your committee would briefly state the result of their investigation:

First. The exhibits accompanying memorial show that the present mail boats transport the mail from Apalachicola, Florida, to Bainbridge, Georgia, at a loss annually of $27,775 19, showing the present pay from the department to be totally inadequate to the support of said mail route.

In this estimate the original cost of the boats is not included; but the loss is shown by a balance sheet of expenses in running the boats on the one hand, and then estimating and selling out their total receipts from all sources, as well their contract pay from the department, as also from such trade as they are enabled to obtain, showing the above difference to their loss annually.

Second. That the present contractor, from the time he assumed the service, and before the contract was transferred to him from the original contractor, has carried the mail with perfect regularity, and given entire satisfaction.

Third. That the two mail boats now in the service are new, and the best ever before engaged therein, and that the memorialists desire their retention.

Fourth. That the past experience on said mail route, of letting the contract to bidders, shows a system of speculation by parties in many instances irresponsible; and has heretofore almost invariably resulted in failure and consequent embarrassment to the department.

That in the present contractor an opportunity is offered of remedying this evil of speculation upon the department, inasmuch as he is not the original contractor, but, at the instance of many of the citizens of Apalachicola, he generously assumed the carrying of the mail, and placed two new and first class steamers in the service, and continued so to act in behalf of said city, and in aid of the government in the transportation of its mails, until the contract (which was recently done) was transferred to him by the department.

Your committee, in view of the facts which brought them to the above conclusions, felt that the peculiar circumstances of the mails in that vicinity required some special legislation with a view to remedy, if possible, the evil, and that the government, while giving a mail as a matter of right to that community, should extend the justice of a helping hand to give it stability.

The city of Apalachicola, in commercial importance and trade, ranks as third on the Gulf of Mexico; and her constant trade with New York and Boston in the north, and New Orleans, Mobile, and Galveston in the south, demonstrates the importance of a stable and regular mail to herself, as also to those cities; and this fact is evidenced in part by the petition of the merchants of New York, herewith submitted.

And your committee were admonished that a mail, to be valuable and of service, must be regular and stable.

With these views, and satisfied that the peculiar circumstances connected with the service on this mail route require special legislation to relieve the citizens and cities named of the hardship and embarrassment under which they suffer, accordingly beg leave to report the following bill and recommend its passage.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 256.

IN THE SENATE OF THE UNITED STATES.

JULY 31, 1856.—Submitted and ordered to be printed.

Mr. WELLER made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of the administrator of Jacque or James Gerardin, having had the same under consideration, report:

The petitioner prays to be allowed an amount alleged to be due the late Jacque or James Gerardin for rations while in the military service of the United States during the war of 1812.

Payment of the commutation price of these rations, amounting to about $100, is claimed under "an act for the relief of Francis Lasselle and others, Michigan volunteers, approved January 27, 1835;" and the committee find, upon inquiry at the department, that Gerardin has been paid precisely as other members of the same company, the claim for rations as now made having been rejected by the department because the law made no special provision therefor.

The troops of which Gerardin's company formed a part were in service only from 18th May to 16th August, 1812, and were originally paid for that period By the act referred to above they were paid as if they had served twelve months. But the act not allowing a commutation for rations, and being almost wholly a gratuity, the committee are not disposed further to extend the liberality of the government in this case, and therefore decide that the petitioner's prayer be refused.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 257.

IN THE SENATE OF THE UNITED STATES.

AUGUST 4, 1856.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT:

[To accompany Bill S. 425.]

The Committee on Indian Affairs of the Senate, to whom was referred the memorial of Livingston, Kincaid & Co., beg leave to report:

That on the 2d day of November, 1854, Charles A. Kincaid, one of the members of the firm of Livingston, Kincaid & Co., of Salt Lake city, Utah Territory, left that city as a passenger in the mail stage, from thence to Independence, in the State of Missouri, in possession of the sum of ten thousand and seventy dollars, in gold coin, consigned to a mercantile firm in St. Louis, to whom memorialists were indebted; that the party in and accompanying the mail stage were attacked near Fort Laramie and all massacred, with the exception of Charles A. Kincaid, the stage robbed of its contents, embracing the gold coin, and Mr. Kincaid severely wounded. He was found afterwards and carried into the fort. The United States were nominally at peace with these Indians, the Sioux, at the time of the massacre and robbery of the mail party, though a state of hostilities was soon after recognized, and General Harney dispatched to the plains for their chastisement. The amount of money, with the particular description of the number and value of the pieces, are stated upon the cash book of the firm, and deposed to by the clerk of the establishment. The loss of the money rests upon the testimony of Mr. Kincaid, the only survivor of the party, and the corroborating testimony of the confessions of some of the Indians, soon thereafter captured by General Harney. It is true that the provisions of law have not been pursued in the mode of proving this loss. The relations between the United States with these Indians has been such, since the date of the depredations, as to dispense with the necessity of taking the proof before the proper Indian agent. Could that provision of the intercourse law have been complied with, and the steps usual in such cases been adopted by the President to obtain satisfaction, it would have been fruitless, as the annuities due to these Indians by the treaty of Fort Laramie are payable only in goods, for which there is not any express authority of law allowing them to be retained as indemnity. Those annuities are so small that it would require the whole of

an annuity belonging to the particular band, if, indeed, that coul ascertained, to satisfy the particular claim. The robbery was ı probably committed by some small straggling band of Indians, ı under the circumstances, it would be impolitic to take the good tended for a whole band to pay for the depredations of a stragg and irresponsible portion of them, should the perpetrators belon these bands. Since treated as hostile, the annuity is then gone by act of war, and there is nothing left for indemnity. The commit believing that the substance and spirit of the law have been comp with, report a bill for the payment at once of the indemnity which intercourse act guaranties in all such cases.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 258.

IN THE SENATE OF THE UNITED STATES.

AUGUST 4, 1856.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany Bill S. 426.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Thomas Crown, report:

This claim passed the Senate at the last Congress, and was referred by the House of Representatives to the Court of Claims. The opinion of that court, sustaining the claim, is hereto annexed, as a part of this report.

The committee recommend the passage of the accompanying bill, in accordance with the opinion of the court.

THOMAS CROWN *vs.* THE UNITED STATES.

Opinion of the court on the facts, delivered by Chief Justice Gilchrist.

This claim has been pending since the year 1826—a period of thirty years. It has been before Congress at fourteen sessions. Before the first session of the 29th Congress six adverse reports were made upon it. At that and subsequent sessions there were four favorable reports made upon it. We have now endeavored to analyze a rather confused mass of testimony, and to divest the case of all matters which are not strictly relevant to the issue involved. The case does not appear, heretofore, to have been examined with the care and patience necessary to ascertain the merits of the various questions presented.

The claimant states the following case:

In the month of January, 1826, Captain Blaney, who was then superintending the fortifications at Oak island, near the mouth of Cape Fear river, issued proposals for the delivery at Oak island of six millions of bricks. The claimant filed his proposals for delivering from one million to six millions of bricks, of the size of 8, 4, and 2½ inches, at the rate of $7 75 per thousand. On the 16th of March, 1826, his proposals were accepted by Captain Blaney, who, about that time reported to the Engineer Department a list of the proposals received by him, at the foot of which list he made this entry: "Mr. Crown's proposals are accepted. He makes the bricks within five miles of Oak island." He also made the following certificate: "I certify that the contract entered into between Thomas Crown and

myself for the delivery of three millions of bricks, for the fortifications at Oak island, was made on the most favorable terms that could be procured.

"GEORGE BLANEY,
"*Captain Corps of Engineers.*"

On the 16th of March, 1826, a contract, under seal, was made between the claimant and Captain Blaney, acting for, and on behalf of, the United States.

The claimant proceeded to Smithville, near Oak island, having made all the preparations necessary to enable him to carry on his contract, and by the 1st of July, 1826, had made about eight hundred thousand bricks, of which Captain Blaney admitted that two hundred and fifty thousand could be received under the contract. Certain objections were made to this contract by the Engineer Department, which will be hereafter noticed. There was no agreement between the claimant and Blaney, that the contract might be altered, modified, or rescinded, by either party, or that its approval by any superior officer was necessary. After receiving the communication from the Engineer Department, Blaney refused to fulfil the contract, or to accept the two hundred and fifty thousand bricks. He alleged that the claimant had not the means to fulfil the contract, and was in debt to one Potter; but he owed Potter only about $600, and if Blaney had paid him for his bricks, according to the contract, he would have been relieved from his indebtedness. Blaney insisted upon his transferring his property to Potter, and abandoning the contract, which he did, and sold out his brick-yard, implements, and bricks to Potter for $640. Blaney then accepted from Potter the bricks made by the claimant, being about eight hundred thousand, for which he paid him from $8 to $8 50 per thousand. Blaney refused to modify the contract, or to make any contract with the claimant, although there had been no breach of the contract, as he was not bound to deliver any bricks until the 1st of October, and then but one million. It is upon this state of facts that he asserts a right to recover damages of the United States.

This contract was executed on the 16th of March, 1826, and was forwarded by Captain Blaney to the Engineer Department. It appears from the letter of Colonel Totten, of March 2, 1846, that since February, 1840, there has been a regulation providing "that no contract will be binding on the United States, or will go into operation, until it has been sanctioned by the chief engineer." He also states that the regulation in force at the time of this contract required that they should be reported, "accompanied by a list of the proposals, and a certificate declaring them to have been made on the most reasonable terms that could be procured, and copies of all contracts so made must be forwarded to the Engineer Department." It thus appears that it was not necessary to the validity of this contract that it should have been sanctioned by the chief engineer. A certificate, in proper form, accompanied the list of proposals. Captain Blaney, after stating that Crown's proposals were accepted, certifies that the contract was made on the most favorable terms that could be procured. The regulation, it will be seen, requires that the contract should be

"accompanied by a list of the proposals and a certificate," &c., and Colonel Totten is mistaken when he says in his letter of March 18, 1846, that there was no certificate.

He says, also, that a "contract either contains or must be accompanied by some provision guarantying the full and faithful performance by the contractor of all the stipulations in the contract. This is done either by taking the contractor's bond, with security, or by retaining from the periodical payment a certain per centage of the amount due. This usage seems to have been enforced in 1826."

It does not appear from this that a provision for collateral security need have been inserted in the contract. The "usage" of retaining a per centage of the periodical payment might have been enforced in any case. There is certainly nothing in the letter showing that the contract would be void to all effects if this collateral security were not given, particularly when according to the "usage" a part of the payment due might be retained.

Colonel Totten also says: That "in every contract there must be inserted an express provision, that no member of Congress shall be admitted to any share or part thereof, or to any benefit to arise therefrom, (see act of April 21, 1808, § 3.) This provision of the law appears not to have been enforced about the time that Mr. Crown's contract was prepared. Its non-observance was perhaps owing to the fact that its existence was at that time unknown.

It would certainly be rather rigid to enforce a law which had fallen into disuse, or which was unknown, for the purpose of avoiding a single contract, while others, with the same defect, were permitted to remain unimpeached, particularly where, as in the present case, twenty years had been suffered to elapse before the objection was taken. But the omission to contain this provision does not render the contract void. The first section of the act referred to (2 St., 484) declares a contract with the United States, in which any member of Congress is interested, to be "absolutely void and of no effect." But the third section merely directs that in every such contract there shall be inserted a provision that no member of Congress shall be interested in it. It does not declare the contract to be void if the provision is not inserted, but is merely directory. The public officer who makes a contract which does not contain this provision may subject himself to censure, but the contract would not be void, upon the well understood doctrine of the law on this subject, a doctrine so long established as to need no authorities now in its support.

Four months after the execution of the contract, on the 26th of July, 1826, Captain Smith, of the Engineer Department, wrote to Captain Blaney that the contract was "decidedly objectionable." The first objection stated is, that there is no penalty expressed, and no bond accompanying and referring to it. This has already been sufficiently commented upon.

It is stated, secondly, that "if the whole should not be delivered, the government is bound, nevertheless, to pay the sum to which it would amount if delivered; at least, according to the letter of the contract, that construction might be put upon it." Now the "letter of the contract," in its fourth provision, is, that Crown "shall be entitled *to receive from the* United States, through the hands of the said

George Blaney, or such other officer of the United States as shall be duly authorized, for the bricks delivered by virtue of this contract, the sum of $23,250, lawful money of the United States, being at the rate of $7 75 for each and every thousand bricks." The obvious meaning of this clause is, that Crown shall be paid $7 75 for every thousand of bricks that he shall deliver. The payments by the government depend upon the delivery of the bricks, and it is difficult to understand from what part of the contract the Engineer Department got the idea that the government might be bound to pay the whole price, although a part only of the bricks should be delivered. This objection, we think, must be overruled.

A third objection is, that "the aid the government stipulates to furnish in the reception of the bricks is too indefinitely stated." The contract provides that the "United States are to furnish hands to receive the bricks as they shall be tossed or thrown from the vessel by the contractor." Of course they are to furnish hands enough to perform the duty. It is not necessary that the contract should be so minute in its terms as to exclude every possible conclusion. It is enough if the application of common sense will enable us to understand its provisons. It was upon such objections as these that the Engineer Department pronounced the contract "a nullity:" that is, that it was a contract upon which no action could be maintained, and which could not be the foundation of any legal right whatever, a conclusion which, it appears to us, was unauthorized by law, or any regulation or "usage" of the department.

The claimant offered in evidence the affidavit of James H. Henry, dated on the 4th of February, 1830. This was an *ex parte* affidavit, taken to be used, and actually used, before the committee of Congress, and the witness is dead. *Ex parte* affidavits have always been used before the committees, from necessity, for there was no person to whom to give notice, or, if any one had been notified, no one was bound to attend and cross-examine the witness. The affidavit accompanies the papers sent us by the House.

The affidavits of D. H. Hawkins and Alfred Emerson are in the same condition as that of Henry.

We think the objections that these are *ex parte* affidavits must, under the circumstances, be overruled. The witnesses are dead, and the affidavits are sent to us by tne House. They come properly within an exception to the ordinary rule, that evidence is incompetent where the opposing party has had no opportunity to cross-examine the witness. Cases are often pending before Congress for a whole generation. The tattered and discolored papers transmitted to us, and which, thirty years ago, were laid before Congress, are often the sole evidence of the facts on which the weary claimant relies. During the pendency of his claim, his witnesses fade from manhood into old age; they die, and the memory of the facts perishes with them. It would be unjust in the extreme if we should hold that affidavits, under these circumstances, were incompetent to be used as evidence, and we shall therefore give to them that weight to which we think them entitled.

It is objected that as the jurat on the affidavits of Henry and Hawkins is on the back of the affidavit, it may have been written after the jurat. In the absence of all evidence of fraud, we see no weight in

this objection, nor in the further objection, that Henry's affidavit is not signed by himself. We know of no universal rule of law, that an affidavit, properly authenticated, should be signed. It is merely a further mode of proving that it is the affidavit of the person who purports to have made it. It is the jurat and not the signature which gives it force and causes it to be regarded as evidence.

The affidavit of Hawkins purports to have been sworn to before "Thom. Williamson, Ald'n Bo. of Norfolk." Although we may not judicially know that an alderman of Norfolk has the power to administer an oath, yet we think in the absence of any evidence to the contrary, that is *prima facie* sufficient.

On the part of the United States, the solicitor has offered the affidavits of Captain Blaney and John H. Holmes, which are *ex parte*, and both the witnesses are dead, and the affidavits are sent us by the House. These we consider as competent to be considered, for the reasons before given.

The solicitor has also introduced a paper dated on the 22d of March, 1830, signed by Samuel Potter, but not sworn to, and which was among the papers sent us by the House. This we do not consider competent evidence. It possesses no quality which would render it admissable in any court of justice. Potter is dead, but to hold that a mere statement, unsupported by the solemnity of an oath, is competent to be read in evidence, would be to violate all the principles of evidence, and would be altogether unsafe.

It appears from the contract that Crown was to furnish one million bricks on or before the 1st day of October, 1826. He was not bound to deliver them before that time, but he had a right so to do if he chose, and to receive the contract price for them, which was $7 75 per thousand.

It is in evidence that Crown, being embarrassed for want of funds, sold his interest in the bricks he had made to Samuel Potter. The evidence in relation to this transaction, and to the quantity of bricks made by him is as follows: James Henry testified that he worked there in 1826, that there were between eight and ten thousand bricks—two-thirds of which were of the best quality, and were worked into the fortifications at Oak island; that Blaney would not receive the bricks which Crown had made, and Crown could raise no money to continue the work; that after Blaney's refusal, Potter proposed to purchase the bricks of Crown at a very reduced price, perhaps at one-fourth of their value, and threatened, if he would not accept the offer, to attach the bricks to secure himself; that there was considerable difficulty between them, and at last Crown was obliged to sell out his establishment and bricks at a great sacrifice; that the witness worked for Potter during the rest of the season, and the bricks made by Crown were worked into the fortifications at Oak island, and were as good bricks as the witness had seen in any part of the country.

Alfred Emerson states that Crown incurred considerable expense in preparations for making bricks, and made, to the best of his knowledge, about four hundred thousand bricks, ready for delivery at the fort at Oak island; that Captain Blaney would not receive them, alleging some defect in the contract; that Crown, being in want of money, was obliged *to sell them, at a great loss*, to Potter, who afterwards sold

them to Blaney; that Potter and Blaney came to the brick-yard, and Potter told Crown if he would not receive him as a partner he would call the negroes and put him across the creek; but Crown, resisting, created a great disturbance between them.

D. H. Hawkins testifies, that in August, 1826, he heard Crown propose to Blaney to enter into a new contract with him, or receive his bricks; that Blaney said the contract had been returned, and had not been met with security, or something to that effect, and that Crown had better sell them to Potter, or take him into partnership, but that he would not receive them from Crown; that the witness assisted in working the bricks into the fort, and found them as good as, if not better than, any other bricks received in the fort; that Crown urged Blaney to receive his bricks and enter into a new contract, and told him he was deficient in means to proceed further, and it would be a ruinous thing to him; but Blaney told him his papers had been sent back from Washington, and he would make no more contracts, but would purchase them from whom he pleased.

David Hepburn, in his deposition, taken on the 11th of October, 1855, states that in January, 1827, he was employed at Oak island as a journeyman bricklayer; that the quality of the bricks used was entirely merchantable, as much so as bricks usually are, and that the brick-kilns were in a dilapidated state at that time. In his second deposition, he says that he did not hear nor see of any other brick-making establishment in the neighborhood than that used by Crown, nor was there any other building going on where the bricks made by Crown could have been used; that the brick-yard looked as if a large quantity of bricks had been made there; and the clamps looked as if they had been stripped, and there were not many bricks left; that he was informed by Captain Blaney that the bricks were made by Crown, and there were no other bricks used in the fort, of the size of the Washington City standard, (of which these were,) except those made by Crown—the other bricks used having been brought there in vessels from a distance, and that the bricks made by Crown were brought there in lighters.

Robert Brockett, of Alexandria, Va., states that he is a bricklayer and brickmaker, and is sixty-two years of age; that in the fall of 1826, the average price of hard-burned bricks, at Alexandria, was about $5 per thousand; that in a section of the country where wood, clay, and slave labor abounded, three millions of bricks could have been furnished for $4 per thousand, allowing a reasonable distance for delivery.

Captain Blaney, in his statement of March 23, 1830, says, "Crown became much embarrassed in his circumstances, and applied to me for an advance of $1,000 to $1,500, which it was not in my power to comply with, as the law prohibits advances on contracts; and on the 31st July, or 1st August, 1826, he, without advice or persuasion on my part, came forward and voluntarily relinquished the contract. The letter of Captain Smith, marked B, returning the contract, was written on the 26th July, 1826, and received here on the 1st August, 1826. Crown relinquished the contract on the 1st of August, 1826, and knew nothing of the objection urged against the contract, until I informed him thereof, four or five days after the relinquishment."

He denies, also, that he refused to receive the bricks which Crown had made.

That Blaney did refuse to receive the bricks of Crown is asserted by James Henry, Alfred Emerson, and D. H. Hawkins, who say that Blaney advised Crown to sell them to Potter or take him into partnership, but that he would not receive them of Crown. Here are three witnesses against one, and the weight of evidence is, that Blaney *did* refuse to receive them.

Captain Blaney states, also, that it was understood that the contract was not to be considered binding, until security was given for its performance. But it is well settled that no penal condition, or understanding collateral to a sealed contract, can have any effect upon it.

Captain Blaney also says: "The only difficulty in the final settlement of these accounts was the price which I was to allow Potter for the bricks, as there was a risk in Potter's taking the bricks and selling them for the price which Crown was to have received by the contract, viz: $7 75 per thousand. On a full consultation with the parties, in which Lieutenant Tuttle of the Corps of Engineers, then my assistant, participated, it was determined to allow Potter $8 50 per thousand for all the good brick. This price was fixed upon with the full approbation of Mr. Crown, and with a view to his benefit alone, for it enabled him to pay Potter all he owed him and to receive a sum of money (the amount not known by me) from Potter."

There is a mystery in all the proceedings of Captain Blaney, which it is difficult to fathom. Why was he unwilling to receive the bricks from Crown? Why did he receive the same bricks from Potter? Why did he pay Potter $8 50 per thousand for the bricks which Crown was ready to deliver to him at $7 75 per thousand? In what way could his paying to Potter $8 50 per thousand benefit Crown?

Henry states that Crown had made between 800,000 and 1,000,000 bricks, two-thirds of which were of the best quality and were worked into the fortifications at Oak island. If we take the quantity to have been 900,000, two-thirds of them would be 600,000. Emerson estimates the quantity to have been 400,000. The statement of Mr. Hagner, the Third Auditor, of the 31st January, 1828, shows that on the 31st of July, 1826, Blaney received of Potter 378,000 hard-burned bricks, at $7 50 per 1,000, amounting to the sum of $2,835 06, and that on the 27th of December, he received of Potter—

264,689 bricks, at $7 50 per 1,000 - - -	$1,985 16
And 244,590 bricks, at $8 50 - - - -	2,079 01
On the 26th February, 1827, 334,879, at $8 50 per 1,000	2,846 47
	5,910 64
Add the bricks delivered 31st July, 1826 - -	2,835 06
	8,745 60
To this should be added also a small lot delivered 30th December, 1826, 16,000, at $8 50 - - -	136 07
And the whole amount received of Potter, is - -	8,881 67

Crown claims pay for 800,000 bricks, amounting only to the sum of $5,600, after deducting the expense of transportation to Oak island. It is difficult to estimate with precision the quantity of bricks delivered by Potter from Crown's establishment. But it may be safely assumed that the lot of 378,000, delivered on the 31st July, 1826, came from that place.

This lot, at $7 per 1,000, discounting 75 cents for transportation, amounted to - - - -	$2,646 00
If we split the difference between Henry's and Emerson's estimates, and call the quantity 500,000, it would probably be not far from correct. If, then, we add 122,000, at $7, to the above quantity, they would amount to -	854 00
	3,500 00

This is, as near as we can ascertain, the value of the bricks which Crown had in his yard, and which Blaney received of Potter.

Our opinion is, that Blaney had no right to rescind the contract until the 1st of October, 1826, because that was the earliest time when Crown was bound to deliver the bricks. His belief that Crown was unable to fulfil the contract was no reason for rescinding it before that time. Crown had a right to be paid for such bricks as he should deliver before that time. Blaney never objected at the time that they should be delivered at Oak island. He placed his objections on other grounds altogether. There is no positive proof that he was actuated by any motive which he could not avow, but the circumstances are sufficient to make his conduct appear extremely mysterious. No good reason is given for his refusing to receive the bricks of Crown, and immediately receiving them of Potter at an increased price.

We do not think that Crown has any legal claim for the sheds, kilnwalls, moulds, &c., against the United States. These he sold to Potter, and even if it was done through an oppressive course of conduct by Potter, and even if Blaney was privy to it, we do not see how the United States can be answerable for it. As to the loss of his profits on 2,200,000 bricks, which he estimates at $4,000, it is in evidence that he was embarrassed, and we cannot say that he would have been able to go on with his contract even if he had been paid for the 500,000 bricks which were ready to be delivered, although he thinks he should have been able.

Our opinion is, that the contract was a valid one. We think, also, that the evidence shows no good reason for rescinding it; that Blaney refused absolutely to receive any bricks of Crown; and that Crown then had on hand 500,000 bricks, for which he should have been paid $3,500 under his contract; for which sum we report a bill.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 259.

IN THE SENATE OF THE UNITED STATES.

AUGUST 5, 1856.—Submitted and ordered to be printed.

Mr. BELL, of Tennessee, made the following

REPORT.

The Committee on Naval Affairs, in compliance with the directions of the Senate contained in a resolution of the 16th ultimo, have had under consideration the expediency of authorizing the Secretary of the Navy to purchase, for the use of the government, the copyright of the double chart, known as the Great Circle Protractor, for finding the shortest or great circle route from place to place on the globe; and also to report the sum which, in their judgment, would be a suitable compensation to the inventor; and of the importance of the invention to the interests of navigation, and make the following report:

If it were allowable and practicable, the committee could in no way communicate to the Senate so just and satisfactory a view of the nature and importance of the invention of Professor Chauvenet as by presenting for the inspection of each member of the Senate one of his charts or instruments, accompanied, as it is, by brief explanatory notes and directions for its use. So simple is it in its construction, and so complete for all the valuable purposes for which it is designated, that nothing more would be required for its comprehension and just appreciation than a few moment's examination by any one possessed of a moderate knowledge of the branches of science in which the invention is founded; but as this cannot be done, it may give some greater weight to the further views and representations of the committee on the subject, to state, that they are based chiefly on the expositions of those who, from their professional and scientific attainments, are best qualified to make them.

It is now well understood, by the more intelligent navigators, that the shortest path from one point to another, on the surface of the globe, is along the arc of a *great circle* drawn through these two points.

To make the correctness of this proposition plain and intelligible to the understanding of those who are not familiar with such subjects, a simple definition of a *great circle*, as distinguished from a *small* one, may be necessary. If we divide a globe into two parts by a plane passing through its centre, the two parts will be equal. The circle which then forms the base of each of the two hemispheres is the greatest circle that can be cut from a globe or sphere, and is called

simply *a great circle*. But if the dividing plane does not pass through the centre, the circle which then forms the base of the two unequal segments is called *a small circle*. Now it is readily granted, and it is rigorously proved, in mathematical works, that if such a dividing plane is made to pass through any two given points on the surface of the globe, that portion of the circumference of the circle which lies between the two points will measure less when the section is a great circle than when it is a small one, and indeed less than any other line that can be drawn on the surface of the globe between the same two points. The correctness of this proposition may be illustrated in a general and quite elementary manner, as follows: The larger a circle, the less the degree of curvature it possesses, that is, the nearer does any portion of it approach to a straight line. The shortest of all lines from one point to another is the straight line, which, however, when the points are on the surface of a globe would pass *through* the solid; but when we are restricted to the surface, the shortest path is that which approaches *nearest* to the straight line, and this path is the arc of a circle which has the least possible curvature, or which is drawn with the greatest possible radius.

The knowledge of this mathematical fact is, however, of very little use to the navigator, unless he has the means of finding the position of such a circle on his chart, so that he may direct his vessel according to it. The advantages of this shortest path have been long seen and pointed out by theoretical writers; but the first, at least the first systematic collection of rules for *calculating* such a route is to be found in Robertson's Treaties on Navigation, published in the latter part of the last century. But the laborious nature of the computations there laid down seems to have caused the neglect of the great circle route in favor of the route which the Mercator chart gives by mere inspection. This Mercator route, or *rhumb line*, is that which appears on the chart as a straight line. By following this line, the navigator was sure of reaching his port; he had no intricate calculations to make, and he ran no risk of error. These advantages he readily accepted as a full compensation for the greater distance he might be compelled to sail. Add to this, moreover, that with a chart before his eyes which presented a straight line between the two points as the direct route, it was very difficult to convince him that any other could be shorter. It was said to him: "The Mercator chart is a representation of a spherical surface upon a flat surface; such a representation must of necessity be a distorted one, and so it happens that the shortest route is distorted into an apparently circuitous one, while a longer route is *distorted* into a straight line;" but so long as no graphic method of presenting the shortest route to his eye was given him, but only methods of calculation, the principles of which he did not understand, he very naturally adhered to what he justly regarded as, at least, a safe and sure method. Hence it is that only the more intelligent navigators, and indeed very few except those somewhat versed in mathematics, have paid any attention to the subject.

But, at last, improvements in ship building with a view to greater speed, together with the great increase in the number of vessels which plough the ocean, and, more especially, the introduction of steamers

and the competition of trade, have conspired to arouse the attention of practical men to the importance of *always* taking the most direct route. Accordingly, writers on navigation have endeavored to simplify the rules, and have explained the method in nautical magazines and other periodicals. Inventors have taxed their brains to produce instruments to save the labor of computation, or charts which would present the great circle route as a straight line. It is not necessary to go minutely into the history of these inventions; but it may be well to observe, that, as late as the year 1840, Lieutenant Raper, of the royal navy, published his treatise on the *Practice of Navigation*, no means existed of finding great circle routes other than computation. It is sufficient to glance at the figures which even Raper's improved process of computation requires, to understand why practical men would still be very little tempted to follow his directions, notwithstanding his methods were pronounced to be the briefest yet given, and his work was distinguished by the award of a medal from the Royal Geographical Society. Subsequently, Mr. Towson, of Liverpool, contrived a chart which took the place of a portion of the computation, and some tables which facilitated other portions. This chart, however, did not present the great circle to the eye. It was merely the graphic representation of a mathematical formula, and its principles were entirely beyond the reach of practical men. It required, moreover, the collateral aids of dividers and scales and a collection of printed tables. Nevertheless, Towson's process was a real improvement, and he was duly rewarded for it by the British Admiralty, who published and continue to publish and sell, at a merely nominal price, both the chart and tables. This fact suffices to stamp Towson's process as, thus far, the *best* that is known—or rather that was known prior to the invention of Professor Chauvenet's GREAT CIRCLE PROTRACTOR. This step appears to be a final one. The problem is solved by a graphic process so simple, so obvious, and so entirely within the comprehension of practical men, that it is surprising that such a solution should so long have escaped the investigations of the many theoretical navigators who had studied the problem; and it is also exceedingly doubtful whether anything simpler or more direct can be reached. This protractor consists of two charts, one of which is transparent, and is superposed upon the other. The charts are circular and the upper one revolves about their common centre. The lines upon the lower chart are nothing else than meridians and parallels of latitude, all of which are circles, and are represented by circles on the chart, so that this chart offers itself to the eye in the familiar form of our school maps—of a hemisphere, and is therefore immediately understood by every practical man. The upper chart contains also a system of lines, which, however, are but repetitions of the lines on the lower chart. Those lines on the transparent chart which are *meridians* on the lower chart are now called *great circles;* (and it is obvious to every one that all meridians of the globe are great circles, while all parallels of latitude are small circles.) Thus the invention appears to resolve into this simple change of name, and the happy thought of centering the transparent chart upon the other, so that the great circles may be

made instantly to assume any desired position with respect to points on the lower chart. As soon, therefore, as a great circle of this upper chart is (by reason of the transparency of the material) seen to pass through the two points of the lower chart, between which the navigator wishes to sail, *his problem is solved;* he has before his eyes the great circle he must follow—and this without the use of a scale, or dividers, or tables, or any computation whatever. Moreover, by the numbers marked on the chart, he learns immediately the course he must steer, and the distance he will have to sail. Thus, the finding of the great circle route is rendered as simple as that of the common route on a Mercator chart, and even more complete, inasmuch as distances are not readily found from a Mercator chart. Just as Mercator's chart gave a *final* solution of the problem of mapping the globe, so as to make the meridians parallel and turn rhumb lines or compass routes into straight lines, so the protractor seems to present the *final* solution of the problem of finding great circle routes. Its extreme simplicity, at first sight, makes it appear rather as a happy discovery of a fundamental principle, than as an ingenious *invention*; while this very simplicity is, of course, its greatest merit.

Notwithstanding this, and notwithstanding the favor with which the invention is received by our educated navigators, it is quite certain that the introduction of the protractor into general use will be only a work of time. So was the introduction of the Mercator chart in its day. Navigators are proverbially slow in yielding to innovations. Processes to which they are accustomed they will not readily abandon for new ones, even equally simple. But the prediction is confidently made by those conversant with the subject, that in the course of time great circle sailing will be universally practised, and rhumb line sailing on long voyages will be altogether exploded. For can anybody give a reason why (other things as winds, &c., being equal) the shortest route should not be followed in preference to any other, when that route is known?

But it may be necessary to meet an objection sometimes raised. It is said, that in all cases where any real advantage can accrue from the use of the great circle, the proper route can be marked on the ordinary sailing charts, or described in the sailing directions. Now, supposing the route to be thus marked on the chart, it is practically impossible to adhere to it from one end to the other, on account of variable winds, currents, imperfect steering, &c. If, then, having started upon such a route, the navigator finds himself, by observation, after some days, to have got off the line marked on his chart, what is to be done? If he works back to the line on his chart, he only loses time. Clearly, the proper course for him is to strike a *new* great circle route from the point he is now in, direct to his port. But his chart contains no such route from the point he happens to find himself in, and therefore he is now no better off than were the navigators of the last century. But here the protractor comes in, as completing the navigator's facilities; for it enables him at any moment to decide upon the route *from his actual position*, direct to his port of destination; and this decision is the work of less than a minute to one well acquainted with the use of the instrument. The result of the use of the protractor may be

summed up in the following statement: *Whenever the circumstances of wind and weather will permit, the ship will always head directly towards her port; and whenever the circumstances will not permit this, she will head upon the most advantageous tack.*

Of the immense aggregate gain to commerce of the universal practice of great circle sailing, it is hardly necessary to speak. No improvement in navigation within this century (except, perhaps, the gradual improvement of chronometers) can be named whose value *in dollars* to the commercial interests would sum up more largely.

Of the value of the instrument under consideration in bringing about such a result, if the simple inspection of it does not suffice, there can be no doubt, after the decided and unequivocal testimony not only of highly competent individuals but of bodies which are identified with the interests of commerce and the practical arts, and which do not give such testimony lightly, such as the Board of Trade of Boston, the Chamber of Commerce of New York, and the Franklin Institute of Philadelphia.

The simple and cheap form of the charts necessarily precludes the possibility of the inventor realizing any great profit from their sale, even supposing them at once introduced into general use. On the contrary, the simple, practical and entirely successful result now reached has cost him actual outlays in experiments upon materials and processes of execution, which he never expects to be repaid by any profit on the sale of copies. Moreover, the business of making and selling such charts is not consistent with the duties of a laborious professorship which engrosses all his attention.

Entertaining the views of the utility and importance to the interests of navigation of the Great Circle Protractor, expressed in this report, and believing for the reasons already given, that the inventor can never derive any material benefit from the exclusive right of vending the use of it, secured to him by his copyright, the committee are of opinion that Congress ought to extend the same liberal patronage to Professor Chauvenet, by the purchase of his invention for the use of the government, that has been done in numerous other cases of a similar character, as the only mode by which the government, in the exercise of its constitutional powers, can, in such cases, duly stimulate and reward the inventive genius of the country. As examples of the spirit by which Congress has heretofore been animated, the committee will only advert to two of the great number of instances in which patent or copyrights have been purchased for the use of the government—Sumner's method of finding the ship's place, and Bishop's boom derrick. To each of these inventors ten thousand dollars was voted for the use of their inventions; and your committee believe that the sum of six thousand dollars, which they recommend to be appropriated for the use of the Great Circle Protractor, falls below the measure of compensation awarded in the two cases specially referred to.

The committee append to this report a schedule of the cases in which Congress has heretofore authorized the purchase of inventions for the use of the government, so far as they have been able to collect them.

The committee also report herewith the views expressed of the value

of Professor Chauvenet's invention by various public bodies, and by individuals distinguished for professional skill and science.

Patents and copyrights purchased by government. From the report of Mr. Mallory, Senate Report No. 443, Thirty-third Congress, second session.

Locke's electro-chronographic clock - - -	$10,000 00
Sumner's method of finding a ship's place - -	10,000 00
Captain Bell's (United States army) sight for cannon	20,000 00
Blanchard's gun-stock turning machine - -	18,921 50
Hall's breech-loading rifle and carbine - -	37,553 32
Maynard's right to apply his improved lock and percussion primer for small arms to ten thousand muskets	25,000 00
Hyde's right to use Hale's war rocket - -	10,000 00
Sower and Scoville—Gate's patent dies for cutting screws	750 00
Long's bridge patent - - - - - -	850 00
Mitchell's screw-pile for Sand Key light-house -	1,700 00
" " " Brandywine light-house and ice-breaker - - -	2,400 00
Boettchey's fuze - - - - - -	
Stevens' cut-off - - - - - -	5,200 00
Stevens' shell - - - - - - -	
Sickles & Cook's cut-off - - - -	23,752 23
Taylor's marine camels - - - -	27,500 00
West & Thompson's clasp coupling - - -	
Worthington & Baker's steam pump - - -	8,300 00
Worthington & Baker's percussion water gauge -	1,380 00
Copeland's self-acting blow - - - -	1,894 00
Sewell's salinometers - - - - -	2,850 00
Allen & Noyes' metallic packing - - -	7,850 00
Pirsson's condenser - - - - -	1,000 00
Lamb & Sumner's sheet-flue boiler - - -	6,885 00
Crawford's steam thermometer - - -	100 00
Hunter's submerged wheel - - - -	10,320 00
Francis' life-boat - - - - - -	4,022 00
Bonton, Wright & Fisher, making and charging percussion caps - - - - - - -	15,000 00
Bishop's boom derrick - - - -	10,000 00
Page's electro-magnetic power - - -	20,000 00
Babbit's anti-attrition metal - - - -	20,000 00
James Tucker and John Judge, anchors for the navy	1,500 00
Daniel Pettibone, circular bullet-mould - -	5,000 00
Heirs of Robert Fulton, floating steam batteries -	76,300 00
Mrs. Sarah P. Mather's sub-marine telescope - -	2,000 00
Uriah Brown's shot-proof steamship - - -	20,000 00

Recommendation of the Board of Examiners to the Secretary of the Navy.

NAVAL ACADEMY,
Annapolis, June 16, 1855.

The undersigned, members of the board convened at Annapolis for the examination of midshipmen, respectfully recommend, that Professor William Chauvenet's GREAT CIRCLE PROTRACTOR be liberally supplied to every ship in the navy, and that the young gentlemen of this institution be taught to use it readily and familiarly.

It is an invention correct in principle, simple in contrivance, and perfect in itself, especially called for at this time by the wants growing out of the recent changes in the navigation of the seas, and completing the navigator's set of instruments, which, without it, is defective.

It embodies, in a plain and comprehensible form, a great deal of useful knowledge which the judicious navigator will desire to keep constantly before him, for the purpose of rectifying erroneous impressions easily produced by the customary use of Mercator's chart and the mariner's compass.

It furnishes a convenient means of working, by inspection, several of the problems in nautical astronomy which occur most frequently at sea, and in doing this it exhibits a beautiful illustration of the nature of those problems and of their theory; so that the person who uses the PROTRACTOR intelligently has actually and literally at his fingers' ends the practice of spherical astronomy.

But its principal utility is denoted by its name; it has rendered great circle sailing a *practical* thing, and given it, for the first time, a place in the daily pursuits of the navigator, who, with Professor Chauvenet's instrument and brief instructions on his table, can sail on great circle courses with the same facility as on rhumb lines.

The great circle courses hitherto could only be reached by a tedious process of calculation, and on this account were excluded from practice, except in the very few cases where they could be used generally and on a large scale, and could be continued for a considerable distance.

But the PROTRACTOR enables the navigator to introduce the great circle courses *in detail*—from day to day—from point to point—and thus always to accommodate his steering lines, more exactly than he can possibly do without it, to existing circumstances. It may save him from keeping on a wrong tack, where nothing else can, but a repulsive calculation which is never resorted to. These advantages are mentioned in the *explanation* accompanying the Protractor, and are more fully set forth in the letter of Captain Goldsborough, Superintendent of the Naval Academy, appended to the *explanation*.

JOHN THOMAS NEWTON,
President of the Board.

JOHN B. MONTGOMERY,
JOSHUA R. SANDS,
J. B. HULL,
CHARLES HENRY DAVIS,
} *Members.*

Report adopted by the Board of Trade of Boston, at its meeting in December, 1855.

To the Government of the Board of Trade:

The undersigned committee, appointed on the 5th inst. to examine into and report on Professor William Chauvenet's Great Circle Protractor, in presenting the accompanying pamphlet, can add nothing to the simple directions therein given which would enhance its value.

It may not be out of place, however, to enumerate, for the benefit of those who may not have the pamphlet and the protractor before them, some of the merits of the work:

It gives, by inspection, without the aid of scales, compasses, or other instruments, the great circle or shortest route from place to place, the distance as well as the course being read off from the chart or protractor; also, the latitude and longitude of all intermediate places. In sailing with head winds, the navigator can see at a glance which is the best track to sail upon. The chart itself contains all necessary directions and is quite portable, being only eighteen inches square.

"It gives the azimuth or amplitude of the sun or a star with all necessary precision, and a sufficient approximation to the time and latitude to serve as a check to the ordinary calculations." To get the latitude from a meridian altitude of the sun, the navigator has only to "set the point W. on the declination, take the parallel of distance on the *transparent chart* corresponding to the altitude, counting from the line of courses towards W., following this parallel to the edge of the *fixed chart* and read off the latitude."

Having the time from noon, by chronometer, or otherwise, and the sun's altitude, a simple inspection of the chart shows the latitude.

The time of the ship is also found, by inspection, from the altitude.

The recommendations of such men as Commodore Morris, Captain L. M. Goldsborough, Commander Chas. H. Davis, Professor Peirce, Lieut. M. F. Maury, aud Messrs. Blunt, of New York, given in the pamphlet, must commend the protractor to all navigators who pride themselves on accurately sailing their ships.

Finally, your committee cannot but admire the mechanical simplicity of the chart, which is no less apparent than the "correctness of the principles on which it is constructed." Your committee therefore recommend the "Great Circle Protractor" to navigators, with confidence in the accuracy of its principles and as an aid to the usual calculations.

R. B. FORBES,
J. I. BOWDITCH. } *Committee.*
L. W. TAPPAN.

BOSTON, *November* 9, 1855.

Chamber of Commerce of New York.

At a regular meeting of the chamber, held April 3, 1856, the following report was adopted unanimously:

REPORT.

The committee appointed on the subject of examining and reporting upon the nautical instrument known as Professor Chauvenet's *Great Circle Protractor*, respectfully reports:

That the object of this instrument is to furnish the navigator with the easy means of ascertaining at any moment his route on a great circle of the sphere for any distance.

That the principle on which the instrument is constructed is strictly correct.

That the use of the instrument is so plain that an intelligent person can have no difficulty in this respect.

That it is very desirable for the navigator to have it in his power to determine his great circle courses by inspection, as he does his common courses; and the committee recommend the adoption of the following resolution:

Resolved, That Professor William Chauvenet has, by his invention of the *Great Circle Protractor*, an instrument of real practical utility, rendered a valuable service to the navigation of the seas, and that the general distribution of the protractor would prove highly beneficial.

GEO. W. BLUNT,
[L. S.] E. E. MORGAN,
CHAS. H. MARSHALL.

EDWARD C. BOGERT, *Secretary*.

From the Journal of the Franklin Institute, April, 1856.

The Great Circle Protractor is a neat and ingenious practical solution of a problem of great importance to navigators, namely: to find, without calculation or elaborate plotting, the shortest distance between two points on the surface of the earth; that is, the arc of a great circle which passes through these two points. Now, this, upon an ordinary chart, is a matter of time and difficulty, and many able mathematicians and practical navigators have endeavored to attain a solution of sufficient accuracy to render it valuable in practice, while it was simple enough to be within reach of every commander of a vessel. But though this has been for years laboriously sought for, we believe Professor Chauvenet's plan is the first one which insures success, and a mere inspection of it will suffice to show that, while its accuracy is sufficiently correct for practical purposes, its simplicity leaves nothing to be hoped for or desired.

NATIONAL OBSERVATORY,
Washington, November 21, 1854.

DEAR SIR: Pray accept my thanks for "The Great Circle Protractor." It furnishes navigators with a simple and convenient method of finding, without calculation and by mere inspection, the great circle courses and distances between any two points. I am sure that every navigator who tries it once will always use it afterwards.

Respectfully, &c.,

M. F. MAURY.

Professor WM. CHAUVENET,
U. S. Naval Academy, Annapolis, Md.

BOSTON, *February* 28, 1855.

DEAR SIR: I take much pleasure in bearing testimony to the practical value of your very simple contrivance, called "The Great Circle Protractor," for ascertaining by inspection, almost at a glance, the course and distance from one point to another by the shortest route.

This great circle *chart*, if I may so call it, will be valuable to all navigators who care to sail their ships accurately, and I will cheerfully do all in my limited power to introduce it.

I am, very faithfully, your obedient servant,

R. B. FORBES.

Professor W. CHAUVENET.

CAMBRIDGE, *March* 3, 1855.

The undersigned certify, with great pleasure, their entire approbation of Professor William Chauvenet's Great Circle Protractor, which is strictly accurate in principle, and admirably fitted for the purpose for which it is designed.

Professor Chauvenet's distinguished position in the scientific world would seem to render any declaration of this sort superfluous; but the undersigned are glad to avail themselves of the occasion it affords of expressing their high estimate of the ingenuity displayed in the invention of the protractor, which, in the most simple manner, has made the problems of great circle sailing as easy of solution, by inspection, as those of Mercator's sailing.

An intelligent navigator can acquire a knowledge of its use in a few minutes.

BENJAMIN PEIRCE,
Prof. of Astronomy and Mathematics in Harvard Univ'ty.

CHARLES HENRY DAVIS,
Commander U. S. Navy, Sup't Naut. Alm.

WASHINGTON, *March* 3, 1855.

SIR: * * * * * Your Great Circle Protractor furnishes a convenient and ready mode of ascertaining the great circle between two places whose latitudes and longitudes are known, and their distance and direction from each other, with sufficient accuracy for all practical purposes of navigation.

Respectfully, your obedient servant,

C. MORRIS,

Chief of Bureau of Ordnance and Hydrography.

Professor W. CHAUVENET,

Naval Academy, Annapolis.

NAVAL ACADEMY,

Annapolis, March 10, 1855.

I have examined with interest and attention the "Great Circle Protractor," of Professor Chauvenet.

Coming from the source it does, it is, of course, needless to say even a word with regard to the correctness of the principles upon which it is constructed. In fact, in every conceivable case of great circle sailing, the results it is capable of affording are far more accurate than is necessary for the mere practical ends of the most fastidious navigator; and in many of the ordinary useful problems of navigation and nautical astronomy, it will be found very convenient for determining their spherical solution, readily, to a degree of precision always available for practical purposes with regard to some of them, and frequently of service to assure one of the correctness of computations concerning the rest.

It is, indeed, a beautiful and simple contrivance, founded upon a happy scientific idea, for the purpose, mainly, of enabling the sailor to ascertain the *correct course and distance* between any two places on the globe with as much facility as he can now get *approximate* results of the sort by consulting Mercator's chart, which, at best, is all that the latter can afford, and, in many instances, constantly occurring to the navigator, they are far more removed from the truth than is generally supposed.

During long voyages, especially, it is frequently of great importance to expedition, and, as a general consequence, to safety, for the navigators of both sailing and steaming vessels to know with certainty, and to prosecute, *the really correct course* to a point in their route or the place of their destination. This they may always know and do by providing themselves with the convenient protractor in view, and following the clear and concise directions or rules appended to it. In navigating a vessel by the indications of a Mercator chart, it often happens, in cases of opposing winds, that she is placed, or kept, upon the wrong tack; and even with fair ones, and the point of destination remotely situated, that she is steered a course materially different

from what it should be. Nothing of this kind would occur with a navigator familiar with great circle sailing; and in the course of my long experience in matters of navigation, I have met with nothing at all comparable to the plan devised by Professor Chauvenet for imparting such familiarity.

L. M. GOLDSBOROUGH,
Superintendant of the U. S. Naval Academy.

CAMBRIDGE, MASSACHUSETTS, *July* 24, 1856.

DEAR SIR: You will excuse the liberty which we take in addressing you, although not having the honor of your personal acquaintance; for the national importance of the matter, and the pride which we feel in it as American astronomers, will serve as our apology in writing you in reference to the elegant invention of Professor Chauvenet, of the United States Naval Academy, for enabling a ship to find the great circle, or, in other words, the shortest line to any desired port.

We have seen in the Congressional Reports that a resolution has been introduced, asking the Committee upon Naval Affairs to consider the expediency of purchasing the copyright of this invention for the United States, or making some appropriate remuneration to the inventor. And, after reflection, it seems not improper for us, who have devoted our lives to the pursuit of astronomical knowledge, to volunteer an opinion, and appeal to the lawgivers for their aid in furtherance of the scientific progress of the nation.

Permit us, therefore, to assure you of the scientific elegance and practical utility of this "Great Circle Protractor," which renders that an easy problem now which was previously either practically impossible, or at least so far beyond the reach of ordinary navigators as to be utterly neglected; and which offers, in addition, the means of approximately solving *every spherical triangle*. It seems not too much to say, that a simple, easy, and convenient method of determining at any time the direction and distance of the shortest route to any port was the greatest desideratum in navigation, and that this problem has been so thoroughly solved by Professor Chauvenet in this new instrument, that the only room now remaining for improvement is in the perfection and cheapness of manufacturing the protractor.

Professor Chauvenet is known to the scientific world of both hemispheres as a leading and original mathematical mind, whose purely scientific labors have greatly contributed to the honor of our country, whose successful solutions of numerous practical problems have commended him to the gratitude of the nautical world, and whose excellent and useful solution of the great question of "lunar distances," as well as his improvements in the method of rating chronometers, have been gratuitously *given* to his countrymen. As a native American fellow-citizen, and an officer of a national institution, we feel a pride in his attainments, and especially in this new and beautiful invention of the protractor, and remembering the well-deserved generosity of Congress two years ago to the late Captain Sumner, for his

improvement in a nautical method, we venture to indulge a hope that the far more important inventions of Professor Chauvenet may be appreciated and rewarded by his country.

We are, dear sir, with great respect, your obedient servants,

B. A. GOULD, JR.,
BENJAMIN PEIRCE.

Hon. S. R. MALLORY,
Chairman Naval Committee, United States Senate.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 260.

IN THE SENATE OF THE UNITED STATES.

AUGUST 5, 1856.—Ordered to be printed.

Mr. BUTLER made the following

REPORT.

[To accompany bill (S. 428) "supplementary to the several acts in force relative to the election of President and Vice President of the United States."]

On the 26th of June, 1856, the Senate adopted a resolution in the following words:

"Whereas the Constitution of the United States provides that Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected:

"And whereas it greatly concerns the peace of the country, and, perhaps, the very existence of the government, that the laws enacted by Congress in pursuance of that provision of the Constitution, should be so comprehensive as to provide for every vacancy that can possibly occur in the office of President, and so clear as to admit of no controversy, nor any question of disputed succession to that high office:

"To the end, therefore, that all doubts or defects which may exist in our present laws, on this subject, may be remedied, and further controversy prevented:

"*Be it resolved by the Senate of the United States*, That the Committee on the Judiciary be instructed to examine into those laws, and inquire whether the provisions they contain are constitutional, proper, and adequate, in all respects, to that purpose and end, or whether any further legislation be necessary or proper, and to report thereon by bill or otherwise."

The committee has considered this subject with great care, and herewith reports a bill adequate, in its opinion, to meet all the difficulties suggested.

The fifth section of the second article of the Constitution is the one to which the resolution refers; and that article, together with the acts of Congress passed to give it effect, have been brought under consideration by the committee. The section of the Constitution is as follows:

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress

may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

And the act of Congress approved March 1st, 1792, in reference to this subject, contains two sections, to wit, the ninth and tenth, which are as follows:

"SEC. 9. That in case of a removal, death, resignation, or inability, both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being, shall act as President of the United States, until the disability be removed, or a President shall be elected.

"SEC. 10. That whenever the offices of President and Vice President shall both become vacant, the Secretary of State shall forthwith cause a notification thereof to be made to the executive of every State, and shall also cause the same to be published in at least one of the newspapers printed in each State, specifying that electors of the President of the United States shall be appointed or chosen in the several States, within forty-four days preceding the first Wednesday in December, then next ensuing: provided there shall be the space of two months between the date of such notification and the said first Wednesday in December; but if there shall not be the space of two months between the date of such notification and the first Wednesday in December, and if the term for which the President and Vice President last in office were elected shall not expire on the third day of March next ensuing, then the Secretary of State shall specify in the notification, that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December, in the year next ensuing, within which time the electors shall accordingly be appointed or chosen; and the electors shall meet and give their votes on the said first Wednesday in December, and the proceedings and duties of the said electors, and others, shall be pursuant to the directions prescribed in this act."

The committee will first give its attention to the consideration of this last section, as the one mainly involving constitutional authority to pass it under the provisions of the 5th section of the 2d article.

The first point of view in which this section of the act has been presented to the committee is this: Can Congress, under the general authority and in strict pursuance of the Constitution, do anything more than designate the officer to perform all the duties of President, for the unexpired term of the vacancy occasioned in any one of the methods contemplated in the Constitution? It has been supposed and maintained, with a good deal of force, that the legislation of Congress must be controlled by the 1st section of the 2d article of the Constitution, which reads as follows:

"The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

"*Each* State shall appoint, in such manner as the legislature thereof

may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector."

According to this view, there can be no election of President except once in four years, and the executive functions of President may devolve upon an inferior officer, and be discharged by him, in pursuance of legislative enactment, during the full term for which the President and the Vice President had been elected. If such be a fair construction of the Constitution, then a President might become so without the direct agency or the deliberate judgment of the parties to the federal compact. This is not the opinion of the committee. The legislation of 1792 evidently contemplated that the President *pro tempore* or Speaker should not only be a contingent functionary, with presidential authority of a provisional character, but that he should be confined to a sphere of limited and prescribed duties. There are but two officers expressly provided in the election held once in every four years—a President and his substitute the Vice President. Beyond these, no election by the primary constituent college is provided for. In case of a vacancy in the office of President, either of a temporary or entire character, the powers and duties of the office devolve on the Vice President. In case of a vacancy in the office of Vice President also, the Congress may, by law, declare what officer shall *act as President*, and such officer shall act accordingly, until the disability be removed, or a President shall be *elected*. The *acting officer* has not devolved on him, in terms, the powers and duties of an elected President, according to the provisions of the Constitution. It seems to the committee that the officer selected can act only for a limited term and with a prescribed purpose.

Of course he must discharge all the duties of a President until one is elected, and for such purpose the officer is authorized to perform the duties prescribed in the act of 1792. This act came from the mind of the framers of the Constitution, and was passed in circumstances well calculated to give it the sanction of intelligence and purpose. The President and Vice President are elective magistrates, and hold their authority directly from the Constitution. The officer on whom Congress devolves executive functions by law is not elective; he is not the choice of constitutional constituents, and if he could become President the day after the election of President and Vice President, by their death, then a stranger to the people might indirectly become their ruler against their consent.

Whilst the committee do not question the constitutionality of the clause of the act above mentioned, they are satisfied that these provisions are not sufficiently full and explicit to guard, in all cases, against the mischief of confusion and anarchy.

The ninth section designates but two officers to take upon themselves the executive function, in the contingency specified, namely, the President of the Senate *pro tempore*, and in case there be no President, then the Speaker of the House of Representatives. These, only, are to perform the duties of President as specified in the ninth section. From the termination of one Congress to the meeting of the next,

there may be no Speaker; and whether such Speaker or a President *pro tempore* would have, at the time, the requisite qualifications, under the Constitution, to be invested with the duties and powers of an acting President, is a question of too much importance to be left to the decision of the occasion.

The fourth clause of the second article of the Constitution reads as follows:

"No person, except a native born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States."

Your committee is of opinion that no one can be eligible to discharge, for the time being, the functions of President, unless he be thirty-five years old, and a native born citizen. A Speaker of the House, or a President pro tempore, might not have these qualifications —and if so, he could not act as President in compliance with the Constitution.

To guard against the danger of an entire vacancy, in the office of President, prudence would seem to call for further legislation. What officers then should be designated, after the President pro tempore and Speaker, to act as President? The cabinet for the time being, in some prescribed order, would in most circumstances, be the proper functionaries to fill the vacancy. In cases of death they would be the persons most fit for the occasion. There are other circumstances, however, which would make the cabinet officers unfit to occupy the place of the President. In case of his impeachment for high political offences, the cabinet might be implicated, as *particepes criminis*, and ought not to be in position of allies. To allow any of the cabinet to become President, therefore, might be to arm them with powers of great mischief. Another question, also, might arise—whether they could be regarded as officers after the official functions of their principal had terminated, or were suspended. It might become the duty of the substitute of the President to have new advisers, by removing obnoxious ones from their offending position.

Another class of functionaries has been indicated as properly suited for the discharge of the duties of a vacant presidency, to wit: the sentors in the order of their official term of service, or when several senators have the same continuous term of service, then the senator oldest in years to be invested with the authority of an acting President for the purposes contemplated. There are two objections to such an arrangement: first, a question of fact might arise as to continuous duration of term, and actual age would have to be ascertained by some inquiry before the power could vest with such certainty as ought to be provided by law. Besides, senators are local representatives, and such as are not in a relation to be fitted for the discharge of federative trusts.

The attention of the committee has been turned to another class of magistrates, namely: the chief justice and other justices of the Supreme Court, as officers well calculated to discharge the duties of a provisional President, under an act of the legislature.

These magistrates have assigned to them a high jurisdiction, bring-

ing within its scope duties and powers affecting the concerns and interest of the entire confederacy. They derive their commissions through high sources and the responsible sanctions of those representing the whole and the separate parts of the confederacy, and are well entitled to confidence. But for the provision, in the act of March 1st, 1792, having so long existed on the statute book, conferring on the President of the Senate *pro tempore*, and Speaker of the House of Representatives, the power to act as provisional President, the committee would have preferred to designate the chief justice and other justices of the Supreme Court as the proper officers to perform the executive duties. Acquiescing, however, in what has been enacted, the committee will proceed to recommend other provisions on the subject. When there shall be such a vacancy as may result from the want of a President of the Senate *pro tempore*, and Speaker of the House of Representatives, then the committee recommends that the duties prescribed by act of Congress shall devolve on the following officers: first, on the chief justice, when he has not participated in the trial of the President; and next, on the justices of the Supreme Court, according to the date of their commissions.

The committee is of opinion that none of the already mentioned officers can act as the provisional President, unless he have the qualifications prescribed for eligibility of the President of the United States, as contained in the fourth section of the second article of the Constitution.

The committee further recommends, that when the duties of a provisional President, designated by act of Congress, shall be undertaken, they shall be completed in view of a distinct end, to wit, to call into requisition the primary power of electing a President authorized to exercise all the powers of the Executive as emanating from the Constitution; to have the plenitude of constitutional authority; to be the President of the people, elected by recognized process and prescribed form.

The committee is of opinion that under the fifth clause of the second article of the Constitution, in case of a vacancy occurring in the office of President, that the Vice President elected by the people becomes the President for the residue of the term. In such a case, no power is reserved to elect a President during that term. But, under the same clause, the committee is equally clear in thinking that the officer designated by Congress to act as President when a vacancy occurs in both the offices of President and Vice President, can act only until the vacancy is removed, and a President is elected. And Congress, under this article, must provide the time of holding the election and the day on which the electors are to vote, that being the same throughout the United States. The President, so elected, is to hold the office during a term of four years: this is the only term known to the Constitution of a President elected by the people. No power is given to hold an election, by the people, for the residue of any existing term; the election held under this authority is like an election to provide for an approaching regular vacancy, an election of a President—and, under the first clause of the article, the time of every election by the people is to be four years. When any lesser period is intended it is in

words so stated. The officer who may be selected by Congress to act as President, in the event of the double vacancy of President and Vice President, is to act only until the disability is removed and a President elected. But when such an election is held, there is no limitation of this office other than the four years provided by the first clause. This seems to your committee to be clear. So that your committee has come to a decision as follows: A provisional President, under the act of March 1, 1792, is invested with the executive functions only until a disability is removed, or, in case of an entire vacancy, until a President is chosen by the electoral colleges.

It is apparent, from these suggestions, that the committee believes the act of 1792 to be constitutional in all respects; and, according to its provisions, an election for President must be held (except in a case therein specially mentioned) on the first Wednesday of December after the vacancy occurs. The President thus elected must be inaugurated, according to the twelfth section of the same act, on the fourth of March afterward, and his term will be four years from that date.

A BILL supplementary to the several acts in force relative to the election of President and Vice President of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of removal, death, resignation, or inability, both of the President and Vice President of the United States, the President of the Senate *pro tempore*, and if there be no President of the Senate, then the Speaker of the House of Representatives for the time being shall act as President of the United States until the disability be removed or a President shall be elected; and if there should be no President of the Senate nor Speaker of the House of Representatives for the time being, and it be not a case of vacancy caused by removal, the chief justice of the Supreme Court of the United States, or if there be no chief justice in office, or it be a case of vacancy caused by removal, then the associate justices of the said Supreme Court, successively, according to seniority of commission, shall act as President of the United States until the disability be removed or a President shall be elected: *Provided, however*, That in case any person holding either of the offices mentioned in this section shall not have the qualifications prescribed for President of the United States by the Constitution, or shall be under impeachment, then the next officer in succession (as hereinbefore specified) who may have the requisite qualifications, and not under impeachment, shall act as President of the United States until the disability be removed or a President shall be elected.

SEC. 2. *And be it further enacted*, That the electors appointed or chosen in the several States, pursuant to the tenth section of an act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in cases of vacancies in the offices both of President and Vice President, approved the first day of March, in the year seventeen hundred and ninety-two, shall, at the time and places of meeting to vote for a President of the United States, as prescribed in said section, vote also for

a Vice President of the United States; and that the term of the President and Vice President so elected shall commence on the fourth day of March next succeeding such election, and continue for the period specified in article second, section first, of the Constitutson of the United States.

IN THE SENATE OF THE UNITED STATES, *June* 26, 1856.

On motion by Mr. Crittenden,

Whereas the Constitution of the United States provides that "Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected;"

And whereas it greatly concerns the peace of the country, and, perhaps, the very existence of the government, that the laws enacted by Congress, in pursuance of that provision of the Constitution, should be so comprehensive as to provide for every vacancy that can possibly occur in the office of President, and so clear as to admit of no controversy, nor any question of disputed succession to that high office;

To the end, therefore, that all doubts or defects which may exist in our present laws on this subject may be remedied, and future controversy prevented:

Be it resolved by the Senate of the United States, That the Committee on the Judiciary be instructed to examine into those laws, and enquire whether the provisions they contain are constitutional, proper, and adequate, in all respects, to their purpose and end, or whether any further legislation be necessary or proper; and to report thereon by bill or otherwise.

Attest:

ASBURY DICKINS,
Secretary.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 261.

IN THE SENATE OF THE UNITED STATES.

AUGUST 5, 1856.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill H. R. 238.]

The Committee on Naval Affairs, to whom was referred House bill No. 238, granting a pension to Ansel Wilkinson, have had the same under consideration and report:

That, in reply to a letter addressed to the Commissioner of Pensions in relation to this case, the following letter was received from him:

PENSION OFFICE, *May* 27, 1856.

SIR: I have the honor to acknowledge your letter of the 26th instant, transmitting a bill as passed by the House of Representatives in favor of Ansel Wilkinson, and requesting certain information as to his claim to pension.

The claim is based upon one-half disability by reason of deafness, caused by the firing of cannon on board the schooner "Ariel" to which he was attached as pilot, in the action of the 10th of September, 1813, on Lake Erie. The records in the office of the Fourth Auditor show that "*Asel* Wilkinson" served as alleged; and the papers transmitted present circumstances which render it very probable that the injury was received as therein claimed; but the evidence is not of that character which could be accepted by this office, as sufficient to authorize the allowance of pension. Had the evidence been complete, the pension of Asel Wilkinson, pilot, for one-half disability, would have been graduated by this office, at $8 75 per month, to commence from the date of the closing testimony.

It will be seen, therefore, that the amount of pension provided by the bill exceeds that which this office could, under any circumstances, have allowed.

The bill and accompanying papers are herewith returned.

I have the honor to be, very respectfully, your obedient servant,

J. MINOT, *Commissioner.*

Hon. S. R. MALLORY,
Chairman Com. on Naval Affairs U. S. Senate.

Your committee deem the petitioner entitled to a pension under the facts set forth in the report of the Committee on Naval Affairs of the House, who reported this bill, but they deem a pension at the rate of a *whole or total disability* (viz: $17 50 per month) amply sufficient, and herewith report said bill back with an amendment in accordance thereto, and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 262.

IN THE SENATE OF THE UNITED STATES.

AUGUST 5, 1856.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany Bill S. 429.]

The Committee on Pensions, to whom was referred the petition of Maurice K. Simons, beg leave to report:

That the petitioner is now a pensioner at the rate of $8 per month, on account of an injury received April 27, 1847, which resulted in the loss of his left leg. That, although at the time of his receiving this wound he was serving in no military capacity, yet his services being of great importance, and his conduct highly commendable, he was pensioned as aforesaid by act of Congress, March 3, 1849. He now petitions for an increase of pension, and your committee, viewing the case as a meritorious one, recommends the adoption of the following resolution:

Resolved, That the prayer of the petitioner be granted.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 263.

IN THE SENATE OF THE UNITED STATES.

AUGUST 5, 1856.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany Bill S. 430.]

The Committee on Pensions, to whom was referred the petition of Margaret Davis, (widow of George Davis, a sailing master in the navy of the United States during the war of 1812,) *praying a pension, have had the same under consideration, and report:*

That it appears, from the evidence in the case, that George Davis was a sailing master in the United States navy during the war of 1812, and that, as such, he, *while in the line of his duty*, contracted disease, which ultimately caused his death. The records of the Navy Department show that the name of said George Davis appears on the navy register for the year 1815; and it is a well known fact, that "most of the accounts settled before the year 1817 were destroyed at the burning of the Treasury Department in 1832." It also appears that Mr. Davis, at the time of his death, was on leave of absence; and as the records are destroyed, and nothing exists on the files of the department to prove the fact that Mr. Davis died out of the service; and as the department have acted on the presumption that when *its own records* do not show that an officer died out of service, he must have been in the navy at the time of his death, your committee, deeming the case a meritorious one, recommend that the prayer of the petitioner be granted, and herewith report a bill granting a pension to petitioner, at the rate of *one half* the monthly pay of a sailing master, (at the period said George Davis was in the naval service of the United States,) from the 1st day of February, 1855, at which time the committee deem the proof was completed, as far as was possible under existing circumstances, and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 264.

IN THE SENATE OF THE UNITED STATES.

AUGUST 6, 1856.—Ordered to be printed.

Mr. COLLAMER made the following

REPORT.

[To accompany Bill S. 432.]

The Committee on the Post Office and Post Roads, to whom was referred the petition of George H. Giddings, mail contractor on route No. 12,900 *report:*

They have carefully examined the petition and evidence accompanying it.

The mail contract on route No. 12,900 was taken at the letting in March, 1854, by one David Wasson. The contract was for four years, commencing on the 1st day of July, 1854, to end the 30th day of June, 1858. The service required by the contract was the transportation of the mail in two-horse post coaches, monthly each way, between Santa Fé, New Mexico, and San Antonio, Texas. The compensation for this service was to be sixteen thousand seven hundred dollars per annum.

Wasson commenced the execution of the contract chiefly on means borrowed from the petitioner, and being unable to execute it, the petitioner was compelled, for his own security, to take the contract off Wasson's hands, and he has since been recognized as contractor for the department. Since the petitioner assumed the execution of the contract he has faithfully performed his duty.

The evidence has satisfied your committee that a mail of the size and weight at present carried over this road cannot be carried in two-horse post coaches, and the increase of military posts and the business of the country forbid the expectation that the size and weight of the mail will be diminished. The petitioner is compelled to carry the mail in carriages drawn by four and often by six mules, and this must be done or a portion of the mail must be left. There is no prospect that a smaller force will suffice to transport the mail during the continuance of this contract.

From the length and difficulties of the route, the hostile feelings of the Indians through part of whose country it passes, and the exposure to robberies, the contractor must always send with the mail a strong escort of well armed men, employed at high wages. There is no prospect that this expense can be discontinued during the existence of the

present contract, unless a military escort be allowed the mail, and such an escort will cost the government more than the entire sum proposed to be allowed the contractor.

The appropriation bill for the Post Office Deparment passed by the last Congress doubled the mail pay on this route, for one year from the 18th of August, 1854. This appropriation is not more than a fair indemnity to the contractor for the performance of the double service required of him and the necessary expense of escorts to insure the safety of the mail.

Your committee believe the necessity for this allowance still continues. They therefore report a bill extending that allowance one year, commencing with the eighteenth day of August, eighteen hundred and fifty-five.

All of which is respectfully submitted.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 265.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Submitted and ordered to be printed.

Mr. MALLORY made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of officers of the Japan expedition, asking the same extra pay as was given to the officers of the exploring expedition, have had the same under consideration and report:

The petitioners were officers of the naval force which visited Japan, under the command of Captain M. C. Perry, in the years 1853 and 1854, and they allege that "it has been the generous policy of Congress for several years past to reward the officers and men of naval expeditions, out of the ordinary routine of regular service, with extra compensation; that this was granted in the cases of Wilkes' exploring expedition, the Arctic expeditions, and others.

"And because the Japan expedition was, besides being a special diplomatic service, a surveying exploring expedition, for the great results of which your petitioners refer to the reports of their commander-in-chief, and because the services of the said commander-in-chief have been deservedly rewarded by an appropriation of $20,000, your petitioners ask that the same extra compensation given to the officers and men of Wilkes' exploring expedition may also be given to the officers and men of the Japan expedition."

The extra compensation granted by Congress in the cases referred to was based upon the ground that expenses exceeding those usually incurred by naval men in the discharge of their ordinary sea duties, and extraordinary in character, were incurred by those of the above named expeditions. The pay of the several grades of the navy is established to some extent with reference to the expenditures which their regular duties entail upon them, and without reference to other or extraordinary expenses accruing to them in other cases. Your committee can, therefore, understand and appreciate the ground upon which extra compensation was granted in the cases referred to. No such ground appears in the present case, nor can any such be presumed.

Your committee do not recognize the propriety of granting extra compensation to officers merely because they have been employed upon surveying or exploring expeditions, or upon any other duty not immediately in the line of their duties as naval officers. They see nothing in the petition to sustain the prayer of the petitioners, and they recommend that the prayer be denied and the committee discharged.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 266.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 435.]

The Committee on Public Lands, to whom was referred the petition of Thomas T. Russell and Antonio J. Noda, have had the same under consideration, and they adopt the report made thereupon by the Senate Committee on Public Lands, and they report a bill in accordance therewith.

The Committee on Public Lands, to whom was referred the petition of the register and receiver of the land office at St. Augustine, Florida, praying compensation for making locations of lands under the Arredondo claim, respectfully report:

That the heirs of Fernando de la Maza Arredondo claimed, by virtue of a grant from the Spanish authorities before the cession of that territory, a tract of thirty-eight thousand acres of land in Florida. This claim became the subject of adjudication; and by the decision of the Supreme Court of the United States at the January term, 1839, the grant was held good and valid, and an order made for its location in a specified manner. The location could not be made conformably with the direction of the court, but the grant having been confirmed by judicial decree, the confirmees claimed the right, by virtue of the 11th section of "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," approved May 26, 1824, and an act of May 23, 1828, extending the provisions of that law to claimants in Florida, to enter the like quantity of land elsewhere in that State, which had been once offered for sale. The question as to the right to make such location was also a subject of adjudication in court, and a final decree was entered, establishing the right as claimed. Entries of lands under these judicial decisions have been made at the St. Augustine land office, as is stated in the petition and returns, to the quantity of over twenty thousand acres. For their services in making these entries the officers at the land office receive no compensation. They now ask to be allowed the same amount or per centage on these entries as they receive on those made for cash.

In the last report of the Commissioner of the General Land Office, (pages 23 and 24,) attention is called to this subject, in connexion with some remarks on the location of military land warrants. The Commissioner says: "The services demanded of the district land officers in the location of military land warrants, under the act of September 28, 1850, equal, if not exceed, in each case, those connected with selling a tract of land. It is earnestly recommended that a reasonable allowance be authorized by law for such special duties, and that such allowance be made for the services which the land officers in Florida may render in the location of the Arredondo thirty-eight thousand acre grant in that State, under certain judicial decrees of confirmation.

In regard to this particular case, the officers at St. Augustine represent "that the labor attendant upon making locations under and by virtue" of said claim, "and for which they receive no compensation, is at least ten times as much as is required to make a cash entry," and they suggest the recommendation of "an allowance of the same commission to the land officers in Florida, for making locations under and by virtue of the said Arredondo claim, as they are entitled to on cash sales."

Congress has already, by an act passed at the present sssion, given this compensation on the entry of the bounty land warrants; and the committee are satisfied that the same amount should be allowed for the locations in the case under consideration. They therefore report a bill covering the locations which are authorized to be made under the decisions above mentioned.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 267.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Ordered to be printed.

Mr. PRATT made the following

REPORT.

[To accompany Bill S. 436]

The Committee on Military Affairs, to whom was referred the petition of Susanna T. Lea, widow and administratrix of James Maglenen, having had the same under consideration, report:

The petitioner presents an account against the United States for the loss of a horse and equipments, pressed into the United States service for the purpose of sending an express from Baltimore city to North Point, to ascertain if the British forces were about to land. This occurred about September 9, 1814, and the bill amounts to $130, ($100 for the horse, and $30 for the equipments.) This case has been before Congress since the year 1837. During the 25th and 27th Congresses, respectively, it passed the House of Representatives, but failed in the Senate, chiefly for want of time.

The committee have carefully examined this case, and finding the facts in the petition fully sustained by two disinterested witnesses, who were also members of the same company with the deceased husband of the petitioner, and were fully cognizant of all the circumstances connected with the impressment and loss of the horse, &c., and of their value, decide that the claim is just and equitable, and that the petitioner ought to be paid the amount of her account, $130, and accordingly report a bill for her relief.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 268.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Ordered to be printed.

Mr. BIGGS made the following

REPORT.

[To accompany bill H. R. 345.]

The Committee on Private Land Claims, to which was referred House Bill 345, "*an act for the relief of the heirs and legal representatives of Mrs. Magdalene Broutin, widow of De la Ronde,*" *have had the same under consideration and submit the following report:*

The committee find the facts fully set forth in a report submitted by Mr. Sandidge from the Committee on Private Land Claims, on the 23d of May, 1856, to the House of Representatives, which they hereto attach and make a part of this report. For the reasons set forth therein, the committee are of opinion that the claimants ought to be confirmed in their title, they therefore report back the bill, without amendment, and respectfully recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *May* 23, 1856.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following report:

The Committee on Private Land Claims, to whom was referred the claim of the heirs and legal representatives of Mrs. Magdalene Broutin, the widow of Don Pedro de la Ronde, to two thousand arpents of land in the parish of St. Tammany, in the State of Louisiana, make the following report:

On the 3d of November, 1803, as appears from the title papers executed by Morales, the intendent general of the province of West Florida, then in the possession and under the control of the Spanish government, a concession of two thousand superficial arpents of land was granted to Mrs. Magdalene Broutin, the widow of De la Ronde. This concession was made upon the application of the said widow De la Ronde, and the proof adduced that her deceased husband had, during his life-time, obtained at the hands of the government of Great Britain a certain grant of two thousand arpents of land on Pearl river, in the said province of West Florida, the title to which had been lost.

From the plat and map, it appears the concession by Morales was located on the same tract of land as granted by the British authorities, by Don Carlos Trudeau, royal and private surveyor of the province, on the 28th and 29th November, 1803. And in the titles patent issued by Morales on the 19th January, 1804, it is expressly stated that it was done "without this favor involving any obligation, seeing that she has in due form justified her ownership thereof."

Amos Kent, register of the United States land office in the Greensburg district, in which is situated the land claimed, certifies that the title deed referred to, with a written declaration on the part of the claimants, stating that the land in question had been inhabited and cultivated since 1767, were filed, as notice and evidence of title, with Commissioners Cosby and Skipwith, and recorded in the book kept for that purpose; but that it does not appear that any confirmation was ever obtained, or report made thereon by the commissioners.

Mr. Wilson, Commissioner of the General Land Office, also states, in his letter on file with the papers connected with this claim, that the records of his department did not show that it had ever been acted on by the land commissioners, Messrs. Cosby and Skipwith.

Mr. Childress states, in his affidavit, that in the year 1840 he became acquainted with the tract of land claimed by the representatives of Pierre de la Ronde, on the west side of Pearl river, in the parish of St. Tammany; that said claimants have constantly resided there since that date, cultivating and inhabiting said tract; that he doth not believe that their claim to said land is in dispute with any claimant, or conflicts with any title, the lines of said survey having been recognized in the neighborhood; and furthermore, that he believes the taxes have been regularly paid thereon by the claimants.

The Hon. Thomas G. Davidson declares to the committee, "that it is within his personal knowledge, that in 1826 this family, (the claimants,) or a portion of them, were in possession of the place, and paying taxes on it as owners; that from the appearances of the houses and all the other indications, it appeared to have been inhabited and used for many years—should say for at least twenty."

The sworn statement of Joseph Evans, former sheriff of St. Tammany, establishes the same points of habitation, cultivation, and recognition of title by the people of the neighborhood, as well as the payment of taxes.

These things being all clearly shown, your committee cannot but believe, that had Cosby and Skipwith reported the claim to the government it would certainly have been confirmed at the same time with others of a similar character.

The claimants declare that, after filing their evidence of title with Cosby and Skipwith, the commissioners appointed under the act of 3d March, 1819, for adjusting the claims to land east of the island of Orleans, were of opinion that they had performed every act required of them, and was not aware of the fact that the claim had not been acted upon, until, by the recent surveys of that part of the country, it was returned as public land; although it had been actually cultivated and *inhabited* since the date of the grant, by the present holders and their *vendors*.

The only reason why the title in this case is not considered perfect in itself, arises from the fact that the concession by Morales (although based upon an English grant made prior to 1780, when Spain acquired West Florida from the English) was made by him *after* the retrocession of Louisiana by Spain to France under the treaty of St. Ildefonso, in October, 1800; the government of the United States contending, that in the purchase from France of Louisiana, she acquired all that country east of the Mississippi river known as West Florida; a claim never made good until 1810, and after the people about Bayou Sarah, assisted by others from Mississippi, had, by force of arms, driven the Spanish troops from their chief post at Baton Rouge, declared their independence, and appointed delegates to frame a constitution; when, by proclamation of the President of the United States, the country was declared to belong to this government and to be within the jurisdiction of the territorial government of Orleans.

But the obvious justness of recognizing the official acts of the Spanish authorities during these ten years of rule, as being entitled to some consideration, has induced Congress to confirm, so far as is known to the committee, all the established concessions to land made during that time. Wherefore, the committee report a bill confirming to the claimants the land in question.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 269.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Ordered to be printed

Mr. BIGGS made the following

REPORT.

[To accompany bill H. R. 346.]

The Committee on Private Land Claims, to which was referred House Bill 346, "*For the relief of the heirs and legal representatives of Ignacio Delino, have had the same under consideration and submit the following report:*

The committee adopt and make a part of this report the report from the Committee on Private Land Claims of the House of Representatives, submitted by Mr. Sandidge on the 23d of May, 1856.

For the reasons therein set forth, the committee are of opinion that the heirs and legal representatives ought to be confirmed in their title to the lands claimed, and they therefore report back the bill, without amendment, and recommend the passage thereof.

IN THE HOUSE OF REPRESENTATIVES, *May* 23, 1856.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following report:

The Committee on Private Land Claims make the following report on the claim of the heirs and legal representatives of Ignacio Delino:

On the 21st of September, 1803, Ignacio Delino, a captain in the permanent regiment of the province of West Florida, representing that he had a large family of children, several of whom desired to engage in agricultural pursuits, applied to Don Juan Ventura Morales, governor or superintendent of said province, then in the possession and occupancy of the Spanish authorities, for a concession of two thousand arpents of land, to be located on the west bank of Pearl river, at about four leagues from its mouth.

The application was referred to the royal attorney for taking cognizance of such applications, and by him reported favorably on the 26th of September. The quantity of land asked for, though exceeding the

usual amount provided for in the regulations, was recommended to be conceded "on account of the inferior quality of the soil," the most of it being useful only for the pasturage of cattle.

Whereupon, on the 28th of the same month, Morales, the governor, gave an order of survey, and on the 29th and 30th of November following, Trudeau, royal and private surveyor of the province, surveyed and located the grant for two thousand superficial arpents, on the west bank of Pearl river, at about twelve miles from its fall into the Rigolets, as is shown by his return with the figurative map of the same. And on the 18th of January, 1804, a title was issued by Morales for the land as it had been surveyed and reported to him.

In accordance with the requirements of a law of Congress, P. Dennis de la Ronde filed with Messrs. Cosby & Skipwith, the commissioners appointed to adjust private land claims in that country, his notice of claim, with proofs of title to the land in question.

Amos Kent, register of the land office at Greensburg, in which district the land is situated, certifies that notice and evidence in support of a claim of P. Dennis de la Ronde to the herein described land was filed and recorded in the book kept for that purpose by Commissioners Cosby and Skipwith, and that it does not appear that the claim had ever been confirmed or reported by them.

Mr. Wilson, Commissioner of the Land Office, states, in his letter of the 6th June, 1854, that the claim in question was not to be found in the indexes of the record books of his department. Why the claim was not reported by Cosby and Skipwith is not known; had it been done, there is no doubt but it would have been confirmed, as were all others of a similar character acted on by them; and believing the claimants should not lose their rights because of the failure or neglect of the commissioners, and for the reasons stated herein, and others given by the committee in reporting the claim of Mrs. Magdalene Broutin, widow of De la Ronde and mother of the present claimant, and being fully satisfied of its justness, they herewith report a bill confirming the lands to the heirs and legal representatives of Ignacio Delino.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 270.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Ordered to be printed.

Mr. BIGGS made the following

REPORT.

[To accompany Bill H. R. 347.]

The Committee on Private Land Claims, to whom was referred House bill No. 347, "to confirm the title of Ruhama Whitaker and Rebecca Whitaker to certain lands in the State of Louisiana," adopt as their own the report of the House Committee on Private Land Claims, submitted by Mr. Sandidge, on the 23d May, 1856, and for the reasons therein set forth they report back the bill, without amendment, and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *May* 23, 1856.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following report:

The Committee on Private Land Claims, to whom was referred the memorial of Ruhama and Rebecca Whitaker, for the confirmation of title to certain lands in Louisana, adopt as their own the report and bill of the Committee on Private Land Claims of the last Congress upon the said memorial, and ask a concurrence therein by the House.

IN THE HOUSE OF REPRESENTATIVES, *February* 2, 1855.

The Committee on Private Land Claims, to whom was referred the memorial of Ruhama Whitaker and Rebecca Whitaker, praying the confirmation of title to two tracts of land in Louisiana, have had the same under consideration, and report:

That the following letter, addressed by the Commissioner of the General Land Office to the Hon. John Perkins of the House of Representatives, fully explains the nature of the claim, and embraces the views of the committee thereon. They therefore adopt it as their report:

"GENERAL LAND OFFICE, *September* 20, 1854.

"SIR: I have the honor to return herewith the memorial and accompanying papers of Ruhama Whitaker, widow of the late Aquilla Whitaker, and of Rebecca Whitaker, her daughter.

"This memorial represents that Aquilla Whitaker went to Louisi-

ana in the year 1806, and in 1809 (1st) purchased of John Brown a tract of land containing 560 arpens; that upon this tract he immediately settled with his family, and continued to reside on it until his death; (2d,) that in 1814 the said Aquilla Whitaker, at the probate sale of Michael and Edward O'Connor, purchased a tract of 310 arpens, adjoining the lands of John Brown; that these two tracts constituted the plantation of the husband and father, and were all the lands he owned in Louisiana; that he resided upon this plantation from 1809 until his death, in 1824.

"It is further represented in the memorial, that the aforesaid Ruhama, at the probate sale of her husband, bought the two tracts forming his plantation; that with the exception of about three years spent with her sons, she has ever since lived on and cultivated the place, and raised there nine children to be men and women; that the said plantation, by process of law, having been seized and sold as the property of the memorialists, was bought by Colonel David J. Fluker and Robert Perry, who resold the same to the aforesaid Rebecca, the daughter, vesting at the same time in the said Ruhama the *usufruct* of the land and plantation during her natural life.

"The memorialist Ruhama represents that she is seventy-eight years old; that forty-five of them she has lived on this land; that now she learns the tract is the property of the United States, &c.; and she prays Congress to examine the papers and affidavits, and pass an act confirming to her the titles to the aforesaid two tracts of land.

"The return of survey for the John Brown tract, for 560 arpens, as certified by the Spanish surveyor general in 1799, was made at the time when Spain had the power to grant.—(See Spanish papers under A, in the memorial.)

"The other tract, viz: that of 310 arpens, under Edward O'Conner, appears to have had its origin in 1806, (see papers under B, in the memorial,) when the Spanish authorities had *de facto*, but not *de jure*, possession of the country embracing the land in question, and consequently then had not the power lawfully to grant.

"Further, I find this latter claim entered as No. 47, in favor of the heirs of Edward O'Conner, in his right, in James O'Cosby's register D of 'claims to land in the district west of Pearl river, in Louisiana, founded on orders of survey, (requêtes,) permission to settle, or other written evidence of claim, which, in the opinion of the commissioner, ought not to be confirmed.'—(See American State Papers, D. Green's edition, volume 3, page 57, and the remarks on page 62.)

"From the papers it appears that the land was long held in possession by A. Whitaker and those claiming under him.

"Indeed, the case of the memorialist, as one of great hardship, addresses itself to the liberal consideration of Congress. Pursuant to your oral request, I enclose a bill which would meet the application in the memorial.

"With great respect, your obedient servant,

"JOHN WILSON, *Commissioner*.

"Hon. JOHN PERKINS,

"*House of Representatives*."

The committee report the accompanying bill for their relief.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 271.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Ordered to be printed.

Mr. BIGGS made the following

REPORT.

[To accompany Bill H. R. 348.]

The Committee on Private Land Claims, to which was referred House Bill 348, "for the relief of the heirs and legal representatives of Bernard Hemkin," adopt, as their own, the report from the House Committee on Private Land Claims, submitted by Mr. Sandidge, on the 23d of May, 1856, and, for the reasons therein set forth, the committee are of opinion that the claimants are equitably entitled to the relief provided in the bill; they therefore report the same back, without amendment, and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *May* 23, 1856.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of the heirs and legal representatives of Bernard Hemkin, praying to be allowed to locate certain lands, have had the same under consideration, and report:

That in accordance with the recommendation made by the register and receiver of the land office at Monroe, Louisiana, in July, 1852, in compliance with the act of Congress of the 3d March, 1851, for the settlement of certain classes of private land claims within the De Bastrop grant, Congress confirmed lots numbers *one* and *four*, containing each four hundred arpents, to the heirs of said Hemkin; and that, in locating lot number *four*, the United States deputy surveyor so located it as to conflict with the claim of John B. Eddins; and the register and receiver, in acting upon the confliction, awarded *two hundred* arpents of the aforesaid lot number four to John B. Eddins, upon the ground alone of priority of settlement.

Having thus, of their confirmed claim, been ousted of two hundred arpents of land without any default or negligence of their own, but from the negligent performance of duty on the part of the deputy

surveyor, and regarding the claim for relief to be founded in ju and equity, the committee recommend the passage of the bill with reported, allowing the petitioners to locate the said two hun arpents on any other unappropriated public lands in the Oua land district, not interfering with the pre-emptive or other righ third persons.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 272.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Ordered to be printed.

Mr. BIGGS made the following

REPORT.

[To accompany Bill H. R. 350.]

The Committee on Private Land Claims, to whom was referred House Bill 350, "For the relief of the heirs and legal representatives of Lewis Reggio," adopt as their own the report from the House Committee on Private Land Claims, submitted by Mr. Sandidge on May 23, 1856; and for the reasons therein set forth, the committee are of the opinion that the claimants are justly and equitably entitled to the relief provided in the bill; they therefore report the same back without amendment, and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *May* 23, 1856.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following report:

The Committee on Private Land Claims, to whom was referred the petition of the Messrs. Ducré for confirmation of certain lands in Louisiana, report:

That, from the certificate of David Bradford, clerk in the land office at St. Helena, given on October 10, 1826, it appears "that the notice of claim, and proof in support of the same, of Hilaire, Simon, and Leandre Ducré, to a tract of land of 1,600 arpents in the parish of St. Tammany, Lewis Reggio, original claimant, were recorded in this (the land office) prior to June 1, 1820; and that there does not appear to have been any report of the same made to Congress by the commissioners."

This notice itself with the accompanying papers—and many others filed away among the records of the land office—were "lost at the time of the burning of a part of the papers of that office," as stated to the committee by the Hon. T. G. Davidson, whose information was obtained while acting as register thereof in 1829.

In the title deed executed by Lewis Leggio on May 2, 1818, to the said Ducré, for the land now claimed, it is stated that said tract of land had been held as the property of the vendor, in virtue of his having been the first grantee thereof since the year 1782, with quiet

possession up to that time, and that the original title papers were destroyed in the great conflagration of the city of Orleans in 1788, but that the purchasers were fully aware of the vendor's undisturbed possession since the above mentioned period.

In a copy of the affidavit made by Etiene Reine, sen., on March 13, 1820, before, and taken from the records of, Alexander Chapdu, justice of the peace in the parish of St. James, and which seems to have been a part of the evidence filed with the original notice before the land commissioners, it is stated "that it was within affiant's full and perfect knowledge that Chevalier Reggio settled on Bayou Lacombe a tract of land which had been granted to him by the Spanish government—said grant having been made and confirmed by Don Esteven Miro, the governor of the province of Louisiana; and that said concession was bounded," &c.

Parris Childress, a very reputable gentleman of Louisiana, states, in his affidavit, that he is intimately acquainted with the land claimed by Ducré, situated on the east side of the Bayou Bonforçeau, (Lacombe,) parish of St. Tammany; that said land has been in the actual possession of the said Ducré, to his personal knowledge, since the year 1840; that he resides in the parish of St. Tammany; has passed around the line of said land as surveyed to the said Ducré by the United States surveyor; that said Ducré has continually cultivated the same, and has paid the taxes yearly every year since the residence of affiant has been in the said parish; and that no conflict exists with any claim, or person setting up title to it, as it has been known always in the neighborhood as Ducré's tract, and so surveyed and platted to him in the land office at Greensburg, Louisiana.

Joseph Evans also swears, that for the eight years he was sheriff of St. Tammany parish the taxes had been paid on the land by Ducré, and that he believed the taxes had always been so paid; and testifies as to the other facts of habitation, cultivation, and quiet possession, given by Mr. Childress.

The Commissioner of the Land Office says the claim had not been reported by Messrs. Cosby and Skipwith, the commissioners appointed by Congress to investigate the land claims in that section of country; had they done so, your committee, from the evidence before them, can but believe the same would have been confirmed; and believing that their failure, from whatever cause, to report upon the claim should not deprive the petitioners of all redress, and that it is a just and equitable one, they herewith submit a bill, and ask for the favorable consideration of the House.

4TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 273.

IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1856.—Ordered to be printed.

Mr. BIGGS made the following

REPORT.

[To accompany Bill H. R. 351.]

The Committee on Private Land Claims, to which was referred House Bill 351, "*to extend the rights granted by the act entitled 'an act authorizing certain soldiers of the late war with Great Britain to surrender the lands drawn by them and to locate others in lieu thereof,'* " *have had the same under consideration, and report:*

That the bill only extends to the wife and children of a deceased soldier the same rights and privileges accorded to the soldier himself by the act approved January 7, 1853.

The committee believing it to be just and right that the benefits conferred by said act upon the soldier, who was then living, should enure to the widow and children of the deceased soldier; they therefore report back the bill, without amendment, and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 274.

IN THE SENATE OF THE UNITED STATES.

AUGUST 8, 1856.—Ordered to be printed.

Mr. WADE made the following

REPORT.

[To accompany Bill S. 437.]

The Committee of Claims, to whom was referred the petition of Ephraim Hunt, report:

This claim is for bounty land and pay for service as a soldier during the war of 1812, of which he has been deprived by his failure to obtain a regular discharge, in consequence of a misunderstanding as to the terms of his enlistment. He served until the close of the war, and then, deeming himself entitled to a discharge, he left the army, and returned home, without his discharge.

The circumstances are fully detailed in the report from this committee during the last Congress, hereto annexed.

The bill accompanying that report passed the Senate, but was not acted on by the House of Representatives. It is again submitted to the Senate.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 275.

IN THE SENATE OF THE UNITED STATES.

AUGUST 8, 1856.—Ordered to be printed.

Mr. WADE made the following

REPORT.

[To accompany Bill S. 438.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Thomas H. Baird, report:

This is a claim for half pay as a surgeon in the war of the revolution. The opinions of the court and the dissenting judge are hereto annexed as a part of this report.

The committee, concurring in the favorable decision of the court, report the bill from the court, and recommend its passage.

THOMAS H. BAIRD *vs.* THE UNITED STATES.

Chief Justice Gilchrist delivered the opinion of the court.

The petitioner alleges that his father, Dr. Absalom Baird, was a commissioned surgeon in the army of the revolution, and in that capacity was entitled by law to half pay for life and other emoluments.

Whether this allegation be true is the first inquiry in the case.

It is not denied that he was surgeon of a regiment of artificers, and was discharged from the service, upon the reduction of his regiment, on the 29th of March, 1781.

Whether this corps constituted a part of the army, so as to entitle the surgeon, upon its reduction, to half pay for life, is a point to be determined by an examination into the manner in which it was considered by the legislative authority at the time, and into the language of the resolution upon the subject.

The resolution of September 30, 1780, provides for "the pay and establishment of the officers of the hospital department and medical staff," and specifies the pay of the director, chief physicians, and surgeons of the army and hospitals, purveyor and apothecary, physicians and surgeons of the hospitals, assistant purveyors and apothecaries, regimental surgeons, surgeon's mates in the hospitals, surgeon's mates in the army, and steward and wardmaster for each hospital. As Dr. Baird rendered medical services to the United States, and in their employ, in a position, at least, connected with the army, and as this was the only provision for the payment for medical services, and as he was entitled to compensation, he would seem to be necessarily in-

cluded in the class of "regimental surgeons," particularly if there be anything to corroborate this view of the case.

We think it cannot be denied that Dr. Baird was an "officer," and the resolution of the 21st of October, 1780, provides that the "officers reduced" shall be entitled to "half pay for life." This resolution had regard to the reform of the army which was to take place on the 1st January, 1781. Subsequent to this date, on the 17th of January, a resolution was passed, the preamble to which is as follows: "Whereas, by the plan for conducting the hospital department, passed in Congress the 30th day of September last, no proper establishment is provided for the *officers of the medical staff*, after their dismission from public service, which, considering the customs of other nations, and the late provision made for the officers of the army, after the conclusion of the war, they appear to have a just claim to; for remedy whereof, and for amending several parts of the above mentioned plan," it was provided that all officers in the hospital department and medical staff, hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time as supernumeraries, shall be entitled to receive during life, in lieu of half pay, the following allowance, &c. It was then provided that "regimental surgeons" should receive an allowance equal to the half pay of a captain. It is not at all probable that Congress intended to exclude from the benefit of this resolution the surgeon of the corps of artificers. Still, in order to entitle Dr. Baird to half pay for life, he must be brought fairly within the class of regimental surgeons by reason of his connexion with this corps. On the 12th of November, 1779, Congress resolved "that the eleven companies of artificers raised by the quartermaster general, be reformed and incorporated and arranged in such a manner as the commander-in-chief shall deem proper." On the 3d of October, 1780, a resolution was passed providing for the reduction of certain regiments on the 1st day of January then next, and that after that day the regular army of the United States should consist of "4 regiments of cavalry or light dragoons, 4 regiments of artillery, 49 regiments of infantry, and 1 regiment of artificers," and that the regiment of artificers should consist of eight companies, and each company of 60 non-commissioned officers and privates.

These resolutions appear to us to be entirely conclusive. We do not see how any doubt can remain on the subject. This body of artificers is called a regiment, and is declared to be a part of the regular army. The surgeon of it, therefore, is a regimental surgeon, and if anything more be necessary in order to constitute him such, we are at a loss to understand what it can be.

If these views be correct, as we think they are, when the regiment was reduced on the 29th of March, 1781, the surgeon of the regiment had a right to half pay for life, which no subsequent legislation by Congress could, upon any principle of justice or legal reasoning, take away from him. It was a right earned by meritorious services, and conferred upon him in consideration of the sacrifice of his time and his talents for the good of the cause which all had at heart. To say that any subsequent declaratory legislation by Congress, as to the

character of this corps, could deprive Dr. Baird of his half pay to which he was entitled, would be to declare, not only that the precedents which a sense of justice had established in regard to the binding force of contracts might properly be disregarded—not only to maintain that the opinion and interests of one party to a contract might be substituted for the assent of both—but to assert, that notwithstanding all that had been said and done, there was no contract between Dr. Baird and Congress.

But we think that an analysis of the action that has been had upon this subject will show that there has not even been any declaratory law or resolution by Congress, which tends to the conclusion that Dr. Baird was not entitled to half pay.

On the 19th of March, 1790, General Knox, the Secretary at War, reported a resolution to Congress "that the petition of the late officers of the artillery artificers for the commutation of the half pay cannot be granted, the United States in Congress assembled having decided against the same on the 19th of October, 1785." He says, that the principles on which the decision was founded will appear by the reports of the late commissioner of army accounts, and a committee of Congress, which he submits.

The report of the commissioner was in consequence of the petitions of John Jordan and Thomas Willey, late captains in the Pennsylvania corps of artillery artificers, for a commutation in lieu of half-pay for life. The substance of the report is, that Congress confined the promise of half pay to *military* officers only, and that the officers of artificers were not military officers.

It may be remarked of this report, that it does not even by implication controvert Dr. Baird's claim, because it was made in relation to a class of officers to which confessedly he did not belong. No one ever supposed that a surgeon either in the army or the navy was in the strict sense of the word a military officer; and it is not upon that ground that the present claim rests. The duty of a surgeon is to attend upon the sick and wounded, to employ his skill as well upon those who are enfeebled by disease, as upon those who are wounded in battle. The surgeon is no more a military officer when attached to an infantry regiment than when on duty in the regiment of artificers, and he is as much a military officer in the latter case as when he is on duty at a garrison, or on a recruiting station. We are aware of no reason why Dr. Baird might not properly have been ordered upon any duty which any regimental surgeon might have been required to perform.

The report of the committee of Congress, to which General Knox refers, denies the claim of Captains Jordan and Willey upon the same ground, that they were not military officers, and the same remarks are applicable to it.

General Knox also refers to a former report of his, dated on the 30th of July, 1788, in which he states that the artificers were a part of the civil branch of the ordnance department; and also, that when the officers of this corps were commissioned as officers of "artillery and artificers," the manner of filling up the commissions must have been an error, as it was not authorized by any act of Congress. It

is true, that there may have been no act of Congress pointing out the manner in which the commissions should be filled up; but it is not so clear that the mode in which they were filled up was unauthorized. His report states that "the artificers did not in any instance act in the field as artillerists;" but it states, also, that "they were mostly stationed at the arsenal at Carlisle, and employed in making carriages of various kinds for the use of the artillery in the field." It is not then a forced construction of their position which induced them to regard themselves as officers of "artillery and artificers," although whether they were properly so regarded or not has no bearing on the present case, as we shall hereafter have occasion to remark.

We are not called upon to decide whether Captains Jordan and Willey were or were not "military officers" in a sense which would entitle them to a commutation of half pay. Whatever the decision might be, it would not have the slightest effect upon the question whether Dr. Baird was or was not a commissioned surgeon in the army of the revolution. It may, however, be remarked, that as the resolution of October 3, 1780, provided that the regular army of the United States should consist of certain regiments of cavalry, artillery, infantry, and "one regiment of artificers," it is extremely difficult to understand how anything like logical ressoning can lead to the conclusion that the officers of this regiment, forming a part of the regular army, were not military officers, so as to entitle them to commutation. The "contemporaneous construction" on which stress was laid in the argument, and which led the committee to decide that they were not military officers, is entitled to just so much weight as its intrinsic merits deserve, and no more. Mankind are as competent now to judge of the meaning of words as they were then; and the executive and military departments of that day did not assume to possess any superior knowledge. There is no more mystery in the acts of Congress passed seventy years ago than in those of the present day; nor is any greater skill required to construe them. But, at any rate, the case of Captains Jordan and Willey has no bearing whatever on the case of Dr. Baird. Their case may be used as an *excuse*, but certainly affords no *reason* for omitting to pay this claim.

For these reasons we are of opinion that Dr. Baird was entitled to half pay for life, from the time of the reduction of his regiment on the 29th of March, 1781.

The next question in the case is, whether the claimant is entitled to interest.

On the 3d of June, 1784, Congress passed the following resolution: "That an interest of six per cent. per annum shall be allowed to all creditors of the United States for supplies furnished or services done from the time that the payment became due." No language could be more express or free from doubt than this. It is directly applicable to the present case. Dr. Baird had rendered services to the United States, for which he was entitled to half pay for life. His half pay became due at the expiration of a year from the time of his reduction, and at the end of each successive year thereafter. The resolution was passed from a feeling that it was just and right that interest *should* be paid from the time the half pay became due, and it was a

voluntary contract on the part of the United States constituting a legal claim against them which no subsequent legislation could release without the assent of the other party. It may be added, that up to the year 1837, there was paid interest on 1,510 claims of widows and orphans, and claims of officers for personal services, the statutes of limitation as to such claims having been suspended.

The proceedings in relation to the claim for commutation do not appear to be very material in relation to the case in its present position. On the 23d of March, 1783, a resolution was passed providing that the officers and others entitled to half pay for life, "shall be entitled to receive at the end of the war their five years' full pay, in lieu of half pay for life, in money—that is, specie—or in securities on interest, as Congress should find most convenient." On the 28th of January, 1794, Dr. Baird applied for the benefit of this provision, but died in the year 1805, having, as is said in the report of the Committee of Claims of the 5th of February, 1855, "become wearied and disheartened with delay." In the year 1818 his son, Thomas H. Baird, having become of age, petitioned Congress for relief; and on the 3d of March, 1835, the committee reported that "Dr. Absalom Baird was entitled to the benefit of the provision of the resolution of the 17th of January, 1781, extending the grant of half pay for life to the officers of the hospital department and medical staff." No action was had upon the resolution until the 22d of June, 1836, when an act was passed granting five years' full pay as commutation, under the resolution of 1783, but without interest.

Now this claim does not depend for its validity upon any admission contained in the act of 1836. But the Congress which passed that act must have considered that Dr. Baird had a legal claim of some kind, otherwise their conduct in granting him five years' full pay was wholly indefensible. It is, however, relied upon as a final settlement of the claim. Upon any principle known to the law, this position is wholly untenable. It is easy enough to declare, *ex cathedra*, that it was a final settlement. But it is extremely difficult to imagine, in the absence of all evidence, what reasons can be urged for holding that the payment of a sum of money is of itself a discharge of a debt for a larger amount. A plea of payment of a small sum in satisfaction of a larger is bad even after verdict.—(2 Parsons on Contracts, 130, and notes.) This principle is familiar to every lawyer. A debt may be paid by a fair and well understood compromise carried faithfully into effect. But here there was no compromise. If it were a case between individuals no one would dream of applying such a term to it. The United States are either bound by principles of law applicable to them, or they are not so bound. If they are not bound, there is an end to the discussion, for then all reasoning is fruitless. If they are bound by the principles of law, it is impossible to regard the payment of five years' full pay without interest as a satisfaction of this claim. There is no evidence that either party so regarded it, and unless we set at defiance every principle of law, we cannot hold that one party to a contract, without the assent of the other, can discharge his debt by the payment of a smaller sum than the amount due.

If A owes B a thousand dollars by his promissory note, payable in ten years, with interest, and if, when the note becomes due, A pays five hundred dollars on the note, but refuses to pay the remainder and the interest, upon the principle here contended for the payment of five hundred dollars discharges the debt. Such a proposition, to be refuted, needs only to be stated.

If Dr. Baird was entitled to commutation under this resolution, he should have received either the money or securities, as Congress should find most convenient. They did not find it convenient to pay the money at the time, and of course he was entitled to interest. He asked either for the money or securities on interest, but Congress permitted fifty-three years to elapse after the passage of the resolution, and then gave him merely the sum of $2,400, to which he was entitled in the year 1783. Mr. Ready's report of the 5th of February, 1855, considers only the question whether interest should be allowed on the five years' full pay as commutation from the end of the war, the time when it became due, and the committee decide that interest was due. But as our opinion is that Dr. Baird was entitled to half pay for life, from the 29th of March, 1781, the matter relating to the commutation need not be further inquired into.

The evidence in the case proves, that Dr. Baird was surgeon of the regiment of artificers from the 20th of March, 1780, and served in that capacity until the regiment was reduced on the 29th of March, 1781. It is admitted by the solicitor, and the evidence proves, that the case does not come within any of the acts or resolutions in the nature of acts of limitation, which required claims to be presented within a specified period, and is not barred by any of them. It is admitted that Dr. Baird died on the 27th of October, 1805; and it is proved that the claimant, Thomas H. Baird, was appointed administrator of his estate on the 9th day of March, 1809.

The amount of Dr. Baird's half-pay was $240 per annum, payable at the end of every year. He was entitled to this sum up to the 27th of October, 1805, the day of his death, and interest on the payments as they became due, according to the express provisions of the resolution of June 3, 1784. There was, therefore, due him, at the time of his death, the sum of $10,074 84; upon this sum interest is due from the 27th of October, 1805, until the 1st of June, 1856, deducting therefrom the sum of $2,400, paid under the act of 1836, and we report a bill accordingly.

A BILL for the relief of Thomas H. Baird.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to Thomas H. Baird, administrator of the estate of Absalom Baird, a commissioned surgeon in the army of the revolution, the sum of ten thousand and seventy-four dollars and eighty-four cents, with interest thereon from the 27th day of October, 1805, to the 1st day of June, 1856, deducting therefrom the sum of twenty-four hundred dollars, paid under the act of June 23, 1836.

THOMAS H. BAIRD *vs.* THE UNITED STATES.

Judge BLACKFORD's dissenting opinion.

I dissent from the judgment of the court in this case.

The claimant sues as administrator of one Absalom Baird, deceased. One of the claims is for half pay for life of the intestate, as surgeon in a regiment of artificers in the revolutionary war. The petition charges that the right to said half pay commenced on the 29th of March, 1781, when the regiment was dissolved; and that said right to half pay continued until October, 1805, when the intestate died. The other claim is for interest up to the present time, on the annual payments of said half pay as they respectively fell due, the first of which payments is charged to have become due on the 29th of March, 1782.

The claimant's brief states, that, on the 20th of March, 1780, the intestate "accepted the place of surgeon to Colonel Baldwin's regiment of artificers, in which corps he remained until the 11th of May, 1781, when it was reduced, and the officers were discharged." The claim, therefore, originated about seventy-five years ago. The petition contains the following statement: "That by the 'commutation act,' passed 23d March, 1783, it was provided that the 'officers' shall have 'at the end of the war' five years' full pay in lieu of half pay for life, in money or in securities, &c.—(See Document No. 42, vol. 2, for 1837–'38, and Journal, vol. 4, p. 178.) That by this new contract Dr. Baird became entitled not only to the arrears then due him, but also to five years' full pay, being the granted commutation of his half pay for life. That he was denied the benefit of this substitution. Payment was refused, and after repeated demands and continued efforts with the accounting officers, he, at length, on the 28th of January, 1794, presented his petition to Congress for relief.—(See House Journal, vol. 2, p. 50.) The case was continued without action by the House until 21st December, 1796, when it was ordered that Dr. Baird have leave to withdraw his petition."

The claimant thus shows that Dr. Baird himself presented this claim to Congress, in 1794, when the facts and resolves of Congress relative to the corps of artificers to which Dr. Baird belonged, were recent, and were no doubt well understood. The application then failed. In 1790, the claims of the officers of said corps of artificers to half pay, or commutation thereof, were presented to Congress; when their petition was reported against by the Secretary of War, as follows:

"WAR OFFICE, *March* 19, 1790.

"The Secretary for the Department of War to whom was referred the petition of Alexander Power and others, late officers of the regiment of artillery artificers, reports:

"That the claim of the late officers of the regiment of artillery artificers for half pay, or the commutation thereof, granted to the officers of the late army, was several times submitted to the United States in Congress assembled, and received their decision on the 19th day of October, 1785.

"That the principles whereon the said decision was founded, will fully appear by the reports of the late commissioner of army accounts and a committee of Congress, both of which are herewith submitted. (Nos. 1 and 2.)

"That the said decision being against the claim of the said officers of artillery artificers, the same was referred to the commissioner of army accounts to take order.

"That the said decision appears to the Secretary of War to have been conformable to the several previous resolves of Congress relative to the object of half pay, and that the same ought to be final.

"That the petitioners again brought forward their claim to Congress in the year 1788, which was referred to the subscriber, whose report is herewith submitted, (No. 3,) but which was never acted upon.

"The Secretary of War embraces this occasion respectfully to observe, that it is of high importance to adhere generally to the decisions of the late Congress on the subjects of claims against the United States.

"That he conceives no judgment of this nature should be reversed, but on the most ample proof that the same was formed on a misrepresentation of facts; but that, while such judgments are reversed with great caution, constructive judgments, made on previous resolves of Congress, ought to remain fully established.

"That if a contrary conduct should be admitted, the accounts hitherto settled by the United States, and by the respective States, with individuals, would be liable to revision and unlimited confusion.

"That when the abilities, integrity, and liberality of the former Congress be considered, it may be justly presumed that individuals experienced the fairest investigation of their claims, and that upright decisions were formed thereon.

"That with respect to the present petition, the Secretary of War is unable to perceive any new facts or circumstances of such a nature as to require a repeal of the former decision of Congress on the subject; he therefore reports the following resolve:

"*Resolved*, That the petition of the late officers of the artillery artificers, for the commutation of the half pay, cannot be granted, the United States in Congress assembled having decided against the same on the 19th of October, 1785.

"All which is humbly submitted to the House of Representatives.

"H. KNOX, *Secretary of War.*"

This report of the Secretary of War, and the reports Nos. 1, 2, and 3, to which he refers, are contained in a book called "Revolutionary Claims," pages 120 to 124.

We have then the reports of the commissioner of army accounts and of a committee of Congress, both made in 1785, and a report of the Secretary of War, made in 1790, against the validity of these claims of the officers of the corps of artificers. There is also the fact, stated in the petition, that Dr. Baird himself, in 1794, presented a petition to Congress for relief, and that, in 1796, he had leave to withdraw his petition. This construction of the resolves of Congress on the subject, adopted between sixty and seventy years ago, near the times of their passage, and the resolves themselves satisfy me that Dr. Baird's claim cannot be sustained. But, besides the above facts, there is a

decision of Congress of the 19th of October, 1785, referred to in said report of the Secretarv of War, Mr. Knox, which is a positive law against all such claims as Dr. Baird's—as much so as an act of the present Congress against them would be. And no court has the power, after such a law, to allow any such claim against the government. Congress, indeed, may do so, but it is only because Congress can repeal the law.

The order of Congress, in 1796, "that Dr. Baird have leave to withdraw his petition," and the previous adverse action of the accounting officers, put his claim, as a surgeon in the regiment of artificers, to rest for more than twenty years. But, in 1818, after Dr. Baird's death, the present claimant presented the same claim to Congress. There it remained until 1836, when the following act was passed:

"AN ACT for the relief of the legal representatives of Dr Absalom Baird.

"SEC 1. *Be it enacted, &c.*, That the proper accounting officers of the treasury be, and they are hereby, required to settle the account of Doctor Absalom Baird, deceased, as a surgeon in the regiment of artificers of the army of the United States during the revolutionary war, and to allow his legal representatives compensation equal to five years' full pay of a captain of infantry in the service of the United States, on continental establishment, without interest; which five years' full pay is the commutation for his half pay for life, to be paid to the legal representatives of the said Absalom Baird, out of any money in the treasury not otherwise appropriated.

"Approved June 23, 1836."—(6 Stat. at Large, 641.)

The five years' full pay of a captain of infantry, which was the allowance made by said act, amounted to two thousand four hundred dollars.—(See resolution of Congress, May 27, 1778.) The claimant admits in his petition that that sum was paid at the treasury under said act of 1836.

The said five years' full pay was paid as a compensation for said services of Doctor Baird. That word compensation, which the act uses, is a very common one. It means recompense, satisfaction, amends. So that the five years' full pay, without interest, was paid and received as a recompense for, or in satisfaction of, the services in question. Again—the act of 1836, after allowing said compensation of five years' full pay, says: "which five years' full pay is the commutation for his half-pay for life." The word commutation there used is derived from the Latin word *commuto*, which means "to give or part with one thing for another."—(Ainsworth.) In Webster's Dictionary, the word commutation is said to mean "the act of giving one thing for another." Johnson and others give the same definition. Walker's definition of the word commute, is "to exchange, to buy off." Therefore, Congress, by the act of 1836, paid the claimant five years' full pay, *without interest*, in exchange for the half pay for life; or, in other words, Congress satisfied the claim of half pay for life, by the payment of five years' full pay *without interest*.

The case, therefore, as regards this act, is this: The claimant ac-

plied to Congress for payment of a certain claim of half pay for life. A law was passed for the claimant's benefit, allowing him a compensation equal to five years' full pay, *without interest;* which five years' full pay, says the law, is the commutation of the half pay for life. The claimant afterwards received at the treasury, *under the law and without objection*, the said five years' full pay. The same claimant now demands of the government the same half pay, *with interest*, before demanded, deducting said sum of twenty-four hundred dollars. My opinion is, that the payment and receipt of said sum of money, allowed the claimant by the act of 1836, is a bar to the present demand, were it otherwise tenable.

I have now shown that Dr. Baird never had any valid claim for half pay or commutation. He was a medical staff officer in a corps of artificers; and it is as such officer, and as such officer only, that the claim is presented. If he was not such officer, he has no pretension to the half pay or commutation; and if he was such officer, he had no right to either, because none of the officers of the corps of artificers had any such right. I have also shown that even supposing there had been a valid claim, it is barred by the compromise act of 1836, and the payment and receipt of the money allowed by that act. The claimant contends that, by the act af 1836, Congress intended only to make a part payment of twenty-four hundred dollars on the claim, leaving the balance to be settled by a subsequent Congress. I have no idea that Congress meant any such thing. They meant, as I think is shown in this opinion, that the allowance of five years' full pay, *without interest*, was in exchange for and in satisfaction of the whole demand.

For the foregoing reasons I dissent from the judgment in this case.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 276.

IN THE SENATE OF THE UNITED STATES.

AUGUST 8, 1856.—Ordered to be printed.

Mr. WADE made the following

REPORT.

[To accompany Bill S. 439.]

The Committee of Claims, to whom was referred the petition of George Jewett, executor of Luther Jewett, deceased, report:

Luther Jewett, as appears from the memorial and papers, was collector of customs for the district of Portland and Falmouth, in the State of Maine, from 1849 to 1853.

In July 1852, he was directed to deposit all the public money in his hands with the assistant treasurer at Boston, and to continue so to deposit monthly thereafter

In answer to these instructions, he informed the department that Messrs. Longley & Co. were employed by the banks of that city to convey specie to Boston at 25 cents per $1,000, and asks if he shall employ them to convey the government money. The department answers, that the expense of the transportation of the money will be an allowable charge in his accounts. He accordingly employed Longley & Co. upon those terms. In the fall of the same year Longley & Co. failed, having in their hands (as the memorialist alleges) $2,500 of the public money, which they had received from the said collector, for transportation to Boston, but which they failed to deposit with the assistant treasurer.

Jewett charged $1,000 of this sum in his account with the treasury, but it was disallowed. The reason assigned for not charging the whole amount was, that he possessed Longley's receipt for that sum, but that he had lost or mislaid the receipt for the residue, if any was given. By way of supplying this deficiency, the claimant files a letter of the deputy collector, in which he states, that in the latter part of November, 1852, the collector informed him that he had sent by Benjamin Longley $2,500 to be deposited with the assistant treasurer at Boston. This statement is not sworn to; and, if it had been, it is of too general and indefinite a character to be regarded as evidence to prove the facts alleged in the petition. The receipt for $1,000 is before the committee.

There is, also, before the committee the affidavit of George Jewett, brother and executor of the late collector, who deposes, "that immediately after Longley & Co's failure, which occurred the last of Novem-

ber or early part of December, 1852, Luther Jewett informed me that he had handed Longley & Co. $2,500, to be deposited with the United States sub-treasurer in Boston, and he feared that he had not deposited the same. And I further testify, that Luther Jewett exerted himself to obtain of Longley & Co., after their failure, said sum—that is to say, the sum of $1,000, for he believed said firm would exert their energies to pay this sum, and if he demanded the $2,500 they would not make any exertion to pay, for it would be out of their power to pay so large a sum." Deponent knew these facts from daily conversations with his brother. He further testifies that Longley acknowledged, in his presence, the receiving said $2,500 to pay to the sub-treasurer, and that he had converted it to his own use. Deponent has no pecuniary interest in the case.

Although, by the act of 1846, the failure of a receiver to account for the public money received by him, by the proper vouchers, is regarded as *prima facie* evidence of embezzlement, (9 Stat., 63,) it has been the practice of Congress, in cases of great hardship, where the public money has been lost without any fault or negligence on the part of the receiver, and under circumstances over which he could have had no control, and where no want of care and diligence could be alleged, to interpose and assume the loss. But from the great danger of abuse to which this special legislation is liable, it is conceived to be essential to the public safety that the utmost strictness and exactness of proof should be required.

In this case, the committee being satisfied that the collector used due care and prudence in the mode adopted for depositing the public money with the assistant treasurer as directed, and that it was lost without any fault or negligence on his part, report a bill authorizing the Secretary of the Treasury to credit the amount to his account, and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 277.

IN THE SENATE OF THE UNITED STATES.

AUGUST 8, 1856.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany Bill S. 440.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Ernest Fiedler, report:

This is a claim for the return of excess of duties paid on a quantity of ammonia imported into New York, to the amount of $392 90. The principles upon which the claim is allowed by the court are laid down in the case of James Beatty's executor, to which reference is made.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 278.

IN THE SENATE OF THE UNITED STATES.

AUGUST 8, 1856.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany Bill S. 441.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Sturges, Bennett & Co., report:

Between the years 1847 and 1851, the claimants imported a large quantity of brandy and whiskey, in casks. The quantity entered and appearing on the invoices largely exceeded the quantity ascertained by the return of the gaugers. Duties were levied and paid on the whole invoice quantity. The claim is for a return of the money paid as duty on so much of the liquor as had leaked out of the casks on the voyage of importation, as shown by the return of the gaugers. After an elaborate examination of the legal principles and judicial decisions bearing upon the case, the court hold that "the regulations of the Treasury Department, under which duties were levied on the deficiencies shown by the return of the gaugers, were unlawful, and that the petitioners are entitled to relief against the United States for the amount so levied."

Judge Blackford dissents, on the ground "that the duties sued for were paid without protest."

The questions raised in this case are of some importance to the treasury as well as to the importers; and as they are fully and ably examined on both sides, by the court and by the dissenting judge—in order to bring the subject distinctly to the notice of the Senate, the committee annex to this report the several opinions delivered in the case.

The bill prepared by the court to carry their opinion into effect is herewith reported back to the Senate, without amendment, with the recommendation that it do pass.

STURGES, BENNETT & CO. *vs.* THE UNITED STATES.

The opinion of the court was delivered by Judge Scarburgh.

In this case the petitioners allege that, during the years 1847, 1848, 1849, 1850, and 1851, they imported into the United States certain quantities of brandy and other liquors, in casks, and paid duties thereon at the rate of one hundred *per centum*, not only on the value of the quantity of liquor ascertained by gauge to be contained in the

casks, but also on the value of the quantity of liquor which had leaked out of the casks on the voyage of importation; and that they claim a return of the moneys exacted from them as import duties on such leakage or non-imported liquors.

The petitioners refer in their petition to a certified statement prepared by the collector of New York, by order of the Secretary of the Treasury, for a particular account of their claims. From this statement it appears that, under instructions of the Secretary of the Treasury, the duties upon their importations were levied according to their invoice value, without reference to deficiencies, unless arising from accident at sea. It was conceded, in the argument submitted in this case, that the leakage arose, not from any accident at sea, but from other causes, and that the deficiency was ascertained from the return of the guagers.

The act of Congress entitled "An act reducing the duty on imports, and for other purposes," approved July 30, A. D. 1846, imposed a duty of one hundred *per centum, ad valorem,* on brandy and other spirits distilled from grain or other materials, imported from foreign countries. According to the principles settled by the cases of Marriott *vs.* Brune, (9 How. R., 619,) the United States *vs.* Southmayd, (Ibid 637,) and Lawrence *vs.* Caswell, (13 How. R., 488,) this duty is imposed, not upon the quantity of brandy which may have been purchased abroad, but upon the quantity which actually arrives in this country.

In the case of Marriott *vs.* Brune, duties had been imposed upon importations of sugar and molasses made after the act of 1846, according to the invoice quantity; but the report of the weighers and gaugers showed a deficiency between that quantity and the quantity actually imported. Mr. Justice Woodbury, who delivered the opinion of the court, said: "The general principle applicable to such a case would seem to be, that revenue should be collected only from the quantity or weight which arrives here. That is, what is *imported*—for nothing is imported till it comes within the limits of a port.—(See cases cited in Harrison *vs.* Vose, 9 Howard, 372.) And by express provision in all our revenue laws, duties are imposed only on imports from foreign countries; or the importation from them, or what is imported.—(5 Stat. at Large, 548, 558.) The very act of 1846, under consideration, imposes the duty on what is 'imported from foreign countries.'—(p. 68.) The Constitution uses like language on this subject.—(Art I, §§ 8, 9.) Indeed, the general definition of customs confirms this view; for, says McCulloch, (vol. I., p. 548,) 'customs are duties charged upon commodities, upon their being imported into, or exported from a country.'

"As to imports, they, therefore, can cover nothing which is not actually brought into our limits. That is the whole amount which is entered at the custom-house; that is all which goes into the consumption of the country; that, and that alone, is what comes in competition with our domestic manufactures; and we are unable to see any principle of public policy which requires the words of the act of Congress to be extended so as to embrace more.

"When the duty was specific on this article, being a certain rate

per pound, before the act of 1846, it could, of course, extend to no larger number of pounds than were actually entered. The change in the law has been merely in the rate and form of the duty, and not in the quantity on which it should be assessed.

"On looking a little further into the principles of the case, it will be seen that a deduction must be made from the quantity shipped abroad whenever it does not all reach the United States, or we shall in truth assess here what does not exist here. The collection of revenue on an article not existing, and never coming into the country, would be an anomaly, a mere fiction of law, and is not to be countenanced where not expressed in acts of Congress, nor required to enforce just rights."

The same doctrine is directly applied to importations of brandy, in the case of Lawrence *vs.* Caswell.

It is, moreover, held in these cases, that the quantity actually imported is to be ascertained by the gauger's return. In the case of Lawrence *vs.* Caswell, the question whether the duty ought to be computed on the quantity stated in the invoices, or on the contents as ascertained by the gauger's return, was, *in terms*, considered by the court, and the decision was, that the duty ought to be computed on the latter, and that this question was substantially the same with that decided in the case of Marriott *vs.* Brune. It may be true, as suggested by the solicitor, that there is no mode in which the quantity imported can be ascertained with absolute certainty; but there can be no doubt, we think, that the decision of the Supreme Court, recognizing the measurement by gauge, as the proper legal method for that purpose, is in conformity both to the acts of Congress and to the usage of the government of the United States, for more than half a century.

It is apparent, therefore, that the duties now sought to be reclaimed were paid upon brandies not actually imported, and, consequently, that they were not imposed by law. If, therefore, the petitioners be not entitled to relief, it is not because they have not paid the United States money which the acts of Congress did not require them to pay, but because they paid it under such circumstances as took from them the right to require its repayment.

Prior to the act of March 3, A. D. 1839, an importer might maintain an action for the recovery of an excess of duties, or for the recovery of duties illegally exacted, against a collector in two classes of cases; (1) where the payment was made for unascertained or estimated duties; and (2) where it was made under protest. These two classes are distinctly recognized by Daniel, J., in the opinion delivered by him for the majority of the court, in the case of Carey *vs.* Curtis, 3 How. R., 241, he said: "It will be remembered that the two principal cases in which collectors have claimed the right to retain have been those of unascertained duties, and of suits brought, or threatened to be brought, for the recovery of duties paid under protest. It is matter of history, that the alleged right to retain on these *two* accounts had led to great abuses and to much loss to the public; and it is to these *two* subjects, therefore, that the act of Congress particularly addresses itself." Again: "Besides the litigation spoken of, and which is said to lead to this result, is a litigation for duties paid

under protest, and not for over payment of unascertained duties."—(3 How. R., 243.) Again: "Independently of this statute, the collector might have been sued for over payments on unascertained duties, as well as for duties paid under protest. And it can hardly be reconciled with reason or consistency that Congress designed to preserve the right of suit in the one case, and to deny it in the other. Yet, if these words have the force contended for by the defendant in error, they give the right of action against the collector for duties paid under protest only, leaving the party who has overpaid unascertained and estimated duties no remedy but that of resorting to the Secretary of the Treasury."—(Ibid, 244.)

The effect of the act of March 3, A. D. 1839, was to take away the right of action against collectors in both these classes of cases.—(Cary *vs.* Curtis, 3 How. R., 236.) But by way of compensation to the importer for the loss of his remedy by action, this act made it the duty of the Secretary of the Treasury, whenever it should be shown to his satisfaction that in any case of unascertained duties, or duties paid under protest, more money had been paid to the collector, or the person acting as such, than the law required should have been paid, to take the prescribed measures to have it refunded to the person entitled to the over payment. It may be proper to remark at this point, (1) that this act did not in any way affect, or propose to affect, the *right* of the party making an over payment, in any case therein mentioned, to repayment; and (2) that the power which it confers upon the Secretary of the Treasury is purely *administrative*, and in no sense *judicial*. If, therefore, under this act, an importer, in a case either of unascertained duties, or of duties paid under protest, paid to a collector more money than he was by law required to pay, but could not show to the satisfaction of the Secretary of the Treasury that he had done so, he was without any enforceable remedy; but, nevertheless, the action of the Secretary of the Treasury not being *judicial* but merely *administrative*, the implied contract of the United States to refund to the importer what had been taken or detained from him without authority of law still remained, unsatisfied and undischarged.

Soon after the decision in the case of Cary *vs.* Curtis was made, the act of February 26, A. D. 1845, was passed. What changes in the law were effected by it? First, it restored *sub modo* the right of action against a collector in cases of duties paid under protest; and, second, it required the protest to be made in writing, and signed by the claimant at or before the payment of the duties, setting forth distinctly and specifically the grounds of objection to the payment thereof. It is as follows: "That nothing contained in the second section of the act entitled 'An act making appropriations for the civil and diplomatic expenses of government for the year one thousand eight hundred and thirty-nine,' approved on the third day of March one thousand eight hundred and thirty-nine, shall take away, or be construed to take away or impair, the right of any person or persons, who have paid, or shall hereafter pay money, as and for duties, under protest, to any collector of the customs, or other person acting as such, in order to obtain goods, wares, or merchandize, imported by him or them, or on

his or their account, which duties are not authorized or payable, in part or in whole, by law; to maintain any action at law against such collector, or other person acting as such; to ascertain and try the legality and validity of such demand and payment of duties, and to have a right to a trial by jury touching the same, according to the due course of law. Nor shall any thing contained in the second section of the act aforesaid be construed to authorize the Secretary of the Treasury to refund any duties paid under protest; nor shall any action be maintained against any collector, to recover the amount of duties so paid under protest, unless the said protest was made in writing, and signed by the claimant, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof.—(5 Stat. at Large, p. 727.)

But that act is silent upon the subject of unascertained duties. It mentions only duties paid under protest. It is wholly inapplicable, therefore, to unascertained duties; and the rights of an importer, in reference to the latter, remain the same *after* as they were *before* the passage of that act.

The only remaining act of Congress at all connected with this subject is the act of August 8, A. D. 1846. The second section of that act is as follows: "That the Secretary of the Treasury be, and he is hereby, authorized, out of any money in the treasury not otherwise appropriated, to refund to the several persons entitled thereto such sums of money as have been illegally exacted by collectors of the customs, under the sanction of the Treasury Department, for duties on imported merchandise, since the third of March, eighteen hundred and thirty-three: *Provided*, That, before any such refunding, the Secretary shall be satisfied, by decisions of the courts of the United States upon the principles involved, that such duties were illegally exacted: *And provided, also*, That such decisions of the courts shall have been adopted or acquiesced in by the Treasury Department as its rule of construction."—(9 Stat. at Large, p. 84.)

That statute has no application to unascertained duties. It, in terms, applies only to duties *illegally exacted*. Now, unascertained duties, in the strictest sense of those terms, certainly as applicable to a case like the one now under consideration, are not illegally exacted. There can be no illegality as respects them, except in the detention of the over payment after the true amount of duties has been legally ascertained.

When an entry is made, the collector, jointly with the naval officer, or alone where there is none, is required by law to make a gross estimate of the amount of duties on the goods entered; and if the goods be entered for home consumption, and not warehoused, no permit will be granted for landing them until such estimated duties are paid.—(1 Stat. at Large, p. 664, § 49; 1 Ibid., p. 673, § 62; 9 Ibid., p. 53, § 1.) And, if it be necessary, in order to ascertain the duties thereon, to weigh, gauge, or measure the goods, they cannot, without the consent of the proper officer, be removed from the place where they are landed before they have been weighed, gauged, or measured; and if spirits, before the proof, or quality and quantity thereof are ascertained and marked thereon, by or under the direction of the proper

officer for that purpose.—(1 Stat. at Large, p. 665, § 51.) So far, therefore, from unascertained duties being duties illegally exacted, they are always demanded and paid in strict conformity to law. The very terms imply that duties are to some extent imposed and payable in the particular case, but that the true amount is unknown and undetermined at the .time of payment. The law, in its requirements upon this subject, looks both to the security of the United States and to the interests of the importer. The just demands of the United States are secured by the payment of the estimated duties, and the goods are liberated without any unnecessary delay, so that they may at once go into the possession of the importer and enter into his business. But the object, as regards the United States, is to secure their just demands, and nothing more; and the payment is made under an implied contract on the part of the United States that the excess, if any, beyond the amount of duties actually imposed by law, shall be refunded to the importer. There can be no doubt, then, that, in in the legal sense, unascertained duties are never illegally exacted, and, consequently, that the second section of the act of August 8, A. D. 1846, does not apply to them.

According to these principles, the case under consideration is in its nature a case of unascertained duties; but it is insisted, on the part of the United States, that at the time when the importations which it embraces were made, the duties thereon, under a regulation of the Treasury Department, were required to be computed on the invoice quantity, and that the duties in question were, therefore, ascertained at the time of their payment. Without pausing to inquire whether the consequences deduced from this regulation would necessarily have followed, it is sufficient to remark that the regulation itself was in conflict with law, and invalid.—(Marriott *vs.* Brune; The United States *vs.* Southmayd; Lawrence *vs.* Caswell.) "The Secretary of the Treasury is bound by the law, and although, in the exercise of his discretion, he may adopt necessary forms and modes of giving effect to the law, yet neither he, nor those who act under him, can dispense with or alter any of its provisions. It would be a most dangerous principle to establish, that the acts of a ministerial officer, when done in good faith, however injurious to private rights and unsupported by law, should afford no ground for legal redress." *Per* Mr. Justice McLean, in Tracy *vs.* Swartwout, 10 Peters R., 95: "Any instructions from the Treasury Department could not change the law." *Per* Mr. Justice Thompson, in Elliott *vs.* Swartwout, 10 Peters R., 153: "The various circulars from the Treasury Department which have been referred to, and which have been construed in some cases to permit the deduction of the quantity not really arriving in this country, and in others to forbid it, are entitled to much respect in deciding on the true meaning of the revenue laws. But when contradictory or obscure, they furnish less aid, and are *never* decisive or incontrollable." *Per* Mr. Justice Woodbury, in Marriott *vs.* Brune, 9 How. R., 634, 635: "The orders as well as the opinions of the head of the Treasury Department, expressed in either letters or circulars, are entitled to much respect, and will always be duly weighed by this court; but it is the laws which are to govern, rather than their opinions of them, and importers, in cases of doubt, are entitled to have

their right settled by the judicial exposition of those laws, rather than by the views of the department." And though, as between the custom-house officers and the department, the latter must by law control the course of proceeding, (5 Stat. at Large, 566,) yet, as between them and the importer, it is well settled that the legality of all their doings may be revised in the judicial tribunals.—(Tracy et al. *vs.* Swartwout, 10 Peters 95; United States *vs.* Lyman, 1 Mason, C. C., 504; Opinions of Attorneys General, 1015.") *Per* Mr. Justice Woodbury, in Greely *vs.* Thompson, 10 How. R., 234: "The regulation of the Treasury Department referred to by the Solicitor cannot, therefore, have the influence or effect claimed for it in his argument. The duties in question here were, in their nature, under the acts of Congress, unascertained at the time of their payment, and no regulation of the Treasury Department could deprive the petitioners of the right vested in them by law so to consider and treat them. The obvious reason is, that no such regulation can change the supreme law of the land.

This, then, being a case of unascertained duties, it was competent for the Secretary of the Treasury, under the act of March 3, A. D. 1839, which for this purpose is still in force, if it had been shown to his satisfaction that more money had been paid to the collector than the law required should have been paid, to have taken the measures prescribed by that act, to have it refunded to the petitioners. But this, the petitioners allege, he has refused to do, upon the grounds that no protest was made, and that a portion of the claim was barred by the statute of limitations. The petitioners, therefore, are entitled to relief, unless the action of the Secretary of the Treasury is conclusive against them. We have already stated that the power of the Secretary of the Treasury under that act is purely administrative, and in no sense judicial. This is sufficiently obvious from the very terms of the act. It did not vest the Secretary of the Treasury with the power of deciding upon the rights of the claimant, except to the extent that he might be required to act upon them. It made it a condition precedent to the party's right to the Secretary's warrant upon the treasurer for the over-payment, that he should satisfy the former, that his claim belongs to one of the classes mentioned in the act, and was well founded. This mode of redress was thus conditioned and restrained, and for wise and good reasons. It would not have been either proper or politic to have authorized a payment out of the public treasury to a party whose rights had not been regularly adjudicated and legally ascertained, except upon the very condition imposed by the statute, that he should show to the satisfaction of the head of the Treasury Department that his case was one for which the statute meant to provide. It was not designed that he should obtain relief from a mere ministerial officer, unless his case was shown to be one on which such officer could act with entire safety to the public interests. If he failed to show such a case, then he failed to obtain the benefits of the statutory remedy; but it was not designed that his rights should be otherwise affected. The implied contract of the United States, in a case of unascertained duties, to refund the overpayment, would still continue in full vigor, the decision of the Secre

tary of the Treasury, affecting merely his own official action, and nothing more. And it is no answer to this view, that in such a case the party was without remedy, except by an appeal to the legislative department of the government; for if that were sufficient, then there would be but few cases of contract of which this court could take cognizance.

Let an order be made authorizing the taking of testimony in this case.

STURGES, BENNETT & CO. *vs.* THE UNITED STATES.

Scarburgh, J., delivered the opinion of the court.

In the years 1847, 1848, 1849, 1850, and 1851, the petitioners imported large quantities of brandy and whiskey in casks. The quantity entered and appearing on the invoices largely exceeded the quantity ascertained by the return of the guagers, and under a regulation of the Treasury Department, then existing, duties were levied on the whole invoice quantity, without making any deduction for deficiencies shown by the returns of the gaugers. The several sums of money paid by the petitioners on such deficiencies amounted to the sum of two thousand and sixty-eight dollars.

When this court considered the question whether testimony should be ordered in this case, it was assumed that on the entries the duties were paid at estimated or unascertained duties. We then held, that the regulations of the Treasury Department, under which duties were levied on the deficiencies shown by the returns of the gaugers, was unlawful, and that the petitioners are entitled to relief against the United States for the amount so levied.

It now appears from the evidence that much the larger portion of the brandy and whiskey imported by the petitioners was warehoused, and that the duties on the deficiencies in such importations were paid on the redelivery of the liquors to them from the warehouses. The act of August 6, A. D. 1846, establishing the warehousing system, requires the goods warehoused "to be kept with due and reasonable care, at the charge and risk of the owner, importer, consignee, or agent, and subject at all times to their order, *upon payment of the proper duties* and expenses, to be ascertained on due entry thereof, for warehousing, and to be secured by a bond of the owner, importer, or consignee, with surety or sureties to the satisfaction of the collector, in double the amount of the said duties, and in such form as the Secretary of the Treasury shall prescribe."—(9 Stat. at L., p. 53.) The condition of the bond prescribed by the Secretary of the Treasury, under this act, is as follows: "The condition of this obligation is such, that if the above bounden (here insert the names of the principal and sureties,) or either of them, or either of their heirs, executors, or administrators, shall, and do, at or before the end of one year, to be computed from the day on which the goods, wares, and merchandise entered for warehousing by or for the above bounden, (insert the

name of the principal,) as imported in the ———, ——— master, from ———, as per entry, made at the port of ———, (insert the first port of entry,) and dated the —— day of ———, in the year aforesaid, shall have been deposited thereat in public store, well and truly pay, or cause to be paid, unto the collector of the customs for the port of ———, for the time being, the sum of ——$\frac{}{100}$ dollars, or the amount of the duties to be ascertained as due and owing on the aforesaid goods, wares, and merchandise, or shall otherwise secure, or cause the amount of said duties to be secured, conformably to law, then this obligation to be void; else to remain in full force and virtue."—(1 Mayo's Synopsis, p. 331.)

The regulation of the Treasury Department, which, during the whole period embraced by the importations made by the petitioners, required the collector to exact duties on the invoice quantity of liquors imported, without making any deduction for deficiencies which might appear by the returns of the gaugers, originated in a misconstruction of the tariff act of 1846, and was, therefore, invalid.—(Marriott *vs.* Brune, 9 How. R., 619; United States, *vs.* Southmayd, ibid., 637; Lawrence *vs.* Caswell1, 3 How. R., 488.)

We have heretofore held in this case, that the act of February 26, A. D. 1845, (5 Stat. at L., p. 727,) is not applicable to a case of unascertained duties; and in the case of James Beatty's executor *vs.* The United States, we held that the want of a protest does not bar a party's claim against the United States for overpaid duties.—(See, also, the opinion of this court in the cases of William W. Spence and Andrew Reid *vs.* the United States, and David Wood *vs.* the United States.)

The question now presented is not precisely the same as that heretofore considered and decided in this case, or as the questions considered and decided in the cases of Beatty *vs.* The United States, Spence and Reid *vs.* The United States, and Wood *vs.* The United States. We are now for the first time called upon to consider whether a party who, on the re-delivery to him of warehoused goods, pays without protest duties not imposed by law, but which are exacted by the collector, is entitled to relief against the United States.

Considering the question now presented under the aspect most unfavorable to the petitioners, it may be thus stated: Can money paid for duties not imposed by law, with a knowledge of all the facts, but under a mutual mistake of the law—both parties having the law in contemplation, and in good faith meaning to conform to it, but acting under a misconstruction which was ascertained by subsequent decisions of the Supreme Court of the United States—be recovered back? That money thus paid cannot be conscientiously retained, is a proposition which no honest mind can resist. Its retention can be excused only on the ground of positive law. There is no room for the slightest doubt that in this instance the money was paid under the influence of the mistake just described, and, to our minds it is obvious that if there be no right of repetition, the law sanctions the doctrine that the property of one man can be acquired by another, without the consent or fault of the owner. This cannot be. "It is an universal principle, founded in reason, that no one is entitled to have or retain

that which *ex æquo et bono* belongs to another; a principle found in every code, and circumscribed in its application only by positive rules, founded on the convenience and the necessities of mankind."—(Per Johnson, J., in Lawrence *vs* Beaubien, 2 Bailey R., 648.)

We do not mean to assert the broad proposition that money paid under a mere mistake of the law can be recovered back. On the contrary, there can be no doubt that if it be paid in discharge of a debt contracted during infancy, or of a debt which would otherwise have been barred by the statute of limitations, or where any merely legal defence existed against a claim for the money *and* it may be honestly retained, no action will lie for its recovery. We entirely concur in the doctrine laid down by Lord Mansfield on this point, "that if a man has actually paid what the law would not have compelled him to pay, but what in equity and good conscience he ought, he cannot recover it back."—(Bize *vs*. Dickason, 1 T. R., 286.) It is equally clear, too, that where money is paid on a fair and deliberate compromise of a doubted and doubtful right, both standing on equal terms and respectively taking their chances of the result, it cannot and ought not to be recovered back.

Nor do we mean to deny that where money is paid under a mere *ignorance* of the law, it cannot be recovered back. Whilst we do not very clearly perceive how the maxim *ignorantia juris non excusat,* can have any just application to such a case, still we do not find it necessary at present to question its applicability under proper restrictions. There can be no doubt that this maxim "is an indispensable rule of legal and social policy; it is that without which crime could not be punished, right asserted, or wrong redressed," (Culbreath *vs*. Culbreath, 7 Georgia R., 70-1,) and we surely would not weaken its force in its just and proper sense. But the very idea of *excuse* implies that there is something to be excused—that there is delinquency of some kind, and hence the maxim may justly be invoked where crime has been committed, a wrong done, a right withheld, or a duty neglected. But to our minds it is a plain perversion of both the language and the spirit of the maxim to apply it to one who has done no wrong, and withheld no right, and neglected no duty, but is himself the injured party, over whom an advantage in opposition to his legal rights and interest has been acquired; such an application of it offends the moral sense of every man, not only because it is a manifest perversion of language, but because it is palpably unjust. It does not seem to us that there is any motive of public policy which can justify it.

A distinction which, it is insisted, is both clear and practical, has been taken in some of the cases between *ignorance* and *mistake* of the law, and it has been suggested that much of the confusion in the books, and in the minds of professional men, upon this subject, is to be traced to the failure to recognize this distinction: "Ignorance," it is said, "implies passiveness; mistake implies action. *Ignorance* does not pretend to knowledge, but *mistake* assumes to know. *Ignorance* may be the result of laches, which is criminal; *mistake* argues diligence, which is commendable. Mere *ignorance* is no mistake, but a mistake always involves ignorance, but not that alone." And, moreover, "mere ignorance of law is not susceptible of proof. Proof

cannot reach the convictions of the mind undeveloped in action, whereas a mistake of the law, developed in overt acts, is capable of proof like other facts."—(Culbreath *vs.* Culbreath, 7 Georgia R., 70; Lowndes *vs.* Chisolm, 2 McCord Ch. R., 455; Lawrence *vs.* Beaubien, 2 Bailey R., 623; Hopkins *vs.* Mazyck, 1 Hill Ch. R., (S. C.,) 242, 251; Robinson *vs.* City Council, 2 Richardson R., 317, 320.)

In the case of Hopkins *vs.* Mazyck, 1 Hill Ch. R., (S. C.,) 250, the court, supposing that the observations of the chancellor were calculated to shake the rule in Lowndes *vs.* Chisolm, and Lawrence *vs.* Beaubien, thought it necessary to use the occasion to express their adherence to it. The learned judge who delivered the opinion of the court said: "Lawrence *vs.* Beaubien was decided upon much consideration, and the more I have reflected upon it since, the more I am confirmed in its correctness; and I feel persuaded that all doubts about it proceeded from misapprehension of the principle on which it is founded. There is, as I understand it, a very obvious distinction between ignorance and mistake of law. Ignorance cannot be proved, (who can enter into the heart of man and ascertain how much knowledge dwells there?) and for that reason the courts cannot relieve against it. But not so in regard to a mistake in law. That is sometimes susceptible of proof. In relation to the general rules of property and common honesty, which every one of common understanding must necessarily be taught by their intercourse with society—as, that we have no right to the property of another, and that when, as in this case, one has parted from his property, either voluntarily or for a good or valuable consideration, his dominion and power over it ceases—no one will obtain credit for the pretence of being mistaken. But who that has had any experience in the profession of the law does not know that a whole life of intense application is insufficient to develop all its mysteries, and that the most untiring zeal and ardent pursuit must leave many of the secret recesses unexplored; and shall it be said that those whose pursuits in life are inconsistent with the study of the law shall understand its most subtle and intricate distinctions by intuition, and that at the price of their fortunes? I trust not. Mistakes as to matters of fact have always been regarded as relievable upon clear, full, and irrefragable proof; and mistakes in law ought to be upon the same footing, when the proof is equally certain. Suppose a party claiming the benefit of a contract founded upon a mistake of law should, when put to answer it, admit the fact and be base enough to insist on it—where is the conscience so seared against the claims of justice and common honesty as not to revolt at it? Is not a mistake of this sort as susceptible of proof as a mistake in a matter of fact? Lawyers are the professional advisers of the community; they are looked up to as oracles in this department; and when, as in Lawrence *vs.* Beaubien, their client is misled by them and makes a contract against his interest, what higher evidence can be wanted of the fact of mistake? Is it not as satisfactory as the admission of the party benefitted by the contract? This is only one mode of proof, and I doubt not that there are are others which would be satisfactory. But we regard the question as definitely settled, and have only thought it necessary to

say this much to vindicate it from the doubts in which the opinion of the chancellor was calculated to involve it." In the latter case of Robinson *vs.* City Council, 2 Richardson R., 320, the learned judge who delivered the opinion of the court said: "An actual mistake of the law, made directly in reference to the law itself, is distinguishable from negative inattention. It is the difference between delusion and ignorance." The cases of Lawrence *vs.* Beaubien and Robinson *vs.* City Council, may be regarded as illustrations of the distinction between *mistake* and *ignorance* of law. The former was a case of *mistake* of law, and relief was granted; the latter was a case of *ignorance* of law, and relief was denied.

In the case of Culbreath *vs.* Culbreath, 7 Georgia R., 70, the plaintiff, an administrator, made distribution of his intestate's estate amongst the defendants, to the exclusion of other distributees, with a knowledge of all the facts, but in *mistake* of the law. The object of the suit was to recover the over payment. The learned judge who delivered the opinion of the court said: "The difference [between *ignorance* and *mistake* of the law] may be well illustrated by the case made in this record. If the plaintiff (the administrator) had refused to pay the distributive share in the estate which he represented to the children of his intestate's deceased sister, upon the ground that they were not entitled in law, that would have been a case of ignorance, and he would not be heard for a moment upon a plea that, being ignorant of the law, he is not liable to pay interest upon their money in his hands. But the case is, that he was not only ignorant of their right in law, but believed that the defendants were entitled to their exclusion, and acted upon that belief by paying the money to them. The ignorance, in this case, of their right, and the belief in the right of the defendants, and action on that belief, constitute the mistake."

The doctrine, therefore, that there is a clear and practical distinction between *ignorance* and *mistake* of the law, not only seems to be founded in reason and justice, but is sustained by authority eminently entitled to respect. Assuming this distinction to be sound and correct, the declaration that where money is paid with a knowledge of the facts, but in *ignorance* of the law, it is a *gift* to the person who receives it, becomes not only intelligible, but consistent alike with truth and justice. The payment having been made, and no other assignable or provable motive for its existing, notwithstanding the maxim *nemo præsumitur donare*, still the conclusion is inevitable that it was a gift. But where money is paid under "an actual mistake of the law, made directly in reference to the law itself," (2 Richardson R., 320,) to say that the payment is *voluntary* and a *gift* to the party receiving it, is as untrue as it is unjust. To apply the maxim *volenti non fit injuria*, to such a case, is, to our minds, plainly absurd. Such a mistake, as was forcibly said by Butler, J., in Robinson *vs.* City Council, "is distinguishable from negative inattention. It is the difference between delusion and ignorance." The idea that a gratuity was intended in such a case is preposterous. "The mind no more assents to the payment made under a mistake of the law, than if made under a mistake of the facts; the delusion is the same

in both cases; in both alike the mind is influenced by false motives."—(Northrop *vs.* Graves, 19 Conn. R., 554.)

The supreme court of errors of Connecticut have distinctly asserted, that when money is paid by one under a mistake of his rights and his duty, and which he was under no legal or moral obligation to pay, and which the recipient has no right, in good conscience, to retain, it may be recovered back, whether such mistake be one of fact or of law: and this, they insist, may be done, both upon *Christian* morals and the common law."—(Northrop *vs.* Graves, 19 Conn. R., 548.) We concur in this doctrine. We believe that it is sustained by the principle of common law, and the adjudications most entitled to respect. We do not mean to say that all the cases can be reconciled with each other. It must be conceded that there is, to some extent, a conflict of authority on this subject, We think, however, that most, if not all, of the citations which can be made against granting relief in cases of mistakes of the law, consist either of mere *dicta*, or of language used in cases which did not call for it, but which might have been decided upon other grounds. The cases are few where the principle held in the case of Northrop *vs.* Graves was necessarily involved and rejected by a direct and positive adjudication.

The principle of the case of Northrop *vs.* Graves has been reaffirmed in the case of Stedwell *vs.* Anderson, 21 Conn. R., 139. In the latter case, it was applied to the conveyance of property, and, in thus applying it, the court stated it in this manner: "When property has been conveyed through mistake, by deed, which the parties never intended should be conveyed, which the grantor was under no legal or moral obligation to convey, and which the grantee, in good conscience, has no right to retain, a court of chancery will interfere and correct that mistake, whether it arose from a misapprehension of the facts, or of the legal operation of the deed."

The same principle was expressly held in the case of Culbreath *v.* Culbreath, 7 Georgia R., 64. In that case the court say: "If there is justice in the plaintiff's demand, and injustice or unconscientiousness in the defendant's withholding it, the action lies; or, to use more appropriate language, the law will compel him to pay. Now, when money is paid to another, under a mistake as to the payer's legal obligation to pay, and the payee's legal right to receive it, and there is no consideration, moral, or honorary, or benevolent, between the parties *by the ties of natural justice*, the payer's right to recover it back is perfect, and the payee's obligation to refund it is also perfect—it becomes *a debt*. It is a case fully within the *ex æquo et bono* rule."—(Ibid., 68, 69.)

In the case of Lowndes *v.* Chisolm, 2 McCord Ch. R., 455, the question directly before the court, and the very point on which the case was decided, was, whether relief can be granted in cases of a mistake of the law. The doctrine was considered "well established, that relief is given where the mistake has been clearly one of law;" and it was thought that "the authorities relied on put the matter beyond all doubt, if, indeed, it could be doubted at this day."

In the case of Lawrence *v.* Beaubien, 2 Bailey R., 623, this doctrine was applied to the relief of a party from the obligations of a

contract under seal. It was there held, that a mistake of law is a ground of relief from the obligations of such contract, where one party acquires nothing, and the other neither parts with any right nor suffers any loss, and *ex æquo et bono* ought not to be binding; and that it makes no difference that the parties were fully and correctly informed of the *facts*, and the mistake as to the *law* was reciprocal. The court considered that there is no difference in principle between an action to recover back money paid and one to enforce a contract founded upon a mistake of law; for, in general, the same principle which furnishes a protection from loss supplies, also, the remedy for a wrong.—(Ibid, 650.) It will be recollected that, in the case of Hopkins *vs.* Mazyck, 1 Hill, Ch. R., 242, the court, supposing that the observations of the chancellor might shake the rule in the cases of Lowndes *vs.* Chisolm and Lawrence *vs.* Beaubien, made use of the occasion to express their adherence to it.

The same doctrine seems to be well established in Kentucky.—(Fitzgerald *vs.* Peck, 4 Litt. R., 125; Underwood *vs.* Brockman, 4 Dana R., 309.) In the latter case it was held that if a man, without any other motive or consideration than an erroneous opinion respecting his legal rights and obligations, release a right, pay money, or undertake to do any act, he is entitled to relief equally as if he had acted under a mistake of fact, and for the same reason, namely, that the contract was not such as the parties, or one of them, at least, really contemplated; "and such," the court say, "we understand to be the rational and consistent doctrine of the common law established in Kentucky."

In the case of Moses *vs.* Macfarlan, 2 Burr R., 1002, Lord Mansfield states the general principles of the action of *indebitatus assumpsit* for money had and received. "This kind of equitable action," he said, "to recover back money which ought not, in justice, to be kept, is *very beneficial*, and, therefore, *much encouraged*. It lies *only* for money which, *ex æquo et bono*, the defendant *ought* to refund; it does *not lie* for money paid by the plaintiff, which is claimed of him as *payable in point of honor and honesty*, although it *could not have been recovered* from him by any course of *law*, as in payment of a *debt barred by the statute of limitations* or *contracted during his infancy*, or to the extent of principal and *legal* interest upon an *usurious* contract, or for money *fairly lost at play*, because, in all these cases, the defendant may *retain it with a safe conscience*, though by *positive* law he was *barred* from recovering. But it *lies* for money paid by *mistake*, or upon a consideration which happens to *fail*, or for money got through *imposition*, (express or implied,) or *extortion*, or *oppression*, or an *undue advantage* taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances. In one word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is *obliged by the ties of natural justice and equity to refund* the money." Here Lord Mansfield broadly lays down the doctrine that the action lies for money paid by *mistake*, without making any distinction between a mistake of *law* and a mistake of *fact*—"a suggestion," it has been said by a learned court, (Northrop *v.* Graves, 19 Conn. R., 556,) "of a much more recent date."

Chief Justice De Grey recognized the same principle in the case of Farmer *vs.* Arundel, 2 Wm. Black. R., 825. He said: "When money is paid by one man to another on a mistake either of fact or of law, or by deceit, this action will certainly lie. But the proposition is not universal, that whenever a man pays money which he is not bound to pay, he may, by this action, recover it back. Money due in point of honor or conscience, though a man is not compellable to pay it, yet, if paid shall not be recovered back·" Without deciding whether the money in that case could have been demanded by the defendant, the court considered it an honest debt, and relief was denied.

In the case of Bize *vs.* Dickason, 1 T. R., 287, Lord Mansfield lays down the same doctrine. "But where," he said, "money is paid under a mistake, which there was no ground to claim in conscience, the party may recover it back in this kind of action." It was upon this ground, and this alone, that judgment was given for the plaintiff; and although Mr. Justice Gibbs, in Brisbane *vs.* Dacres, 5 Taunt. R., 144, said: "I cannot think Lord Mansfield said 'mistake of law,'" yet no mistake of fact existed, and the only mistake in the case was a mistake of law. Lord Mansfield, therefore, must be regarded as referring only to a mistake of law, and the case of Bize *vs.* Dickason is a direct authority for the principle, that where money is paid under a mistake of law, which there was no ground to claim in conscience, it may be recovered back. The point was necessarily involved in that case, and expressly decided by the court.

The case of Bilvie *vs.* Lumley, 2 East. R., 469, is usually cited as a leading authority for the doctrine, that where money is paid with a knowledge of the facts, but under a mistake of the law, it cannot be recovered back. The authority of this case is questioned in the cases of Culbreath *vs.* Culbreath, Lawrence *vs.* Beaubien, and Northrop *vs.* Graves. The report of it is certainly very unsatisfactory. The case was not argued, and it was disposed of in a manner which shows that it was entitled to but little respect as authority. The language of Lord Ellenborough is so loose and indefinite that it is impossible to determine upon what principle he meant to base the decision.

The case of Brisbane *vs.* Dacres, 5 Taunt. R., 144, is also often cited as authority for this doctrine. Taking the principle of that case to be as it is stated by the reporter, it is not at all inconsistent with the decision in the case of Northrop *vs.* Graves. The reporter thus states it: "If a person with knowledge of the fact, but under a mistake as to the law, pays over to another, claiming it as a right, money which he was not compellable to pay, he cannot, upon discovering what his legal right was, recover it back, *there being nothing against conscience in the other party's retaining it.*" It may well be insisted that no stronger principle is fairly deducible from the decision in that case. Mr. Justice Gibbs, who went further than either of his brethren against granting relief on the ground of a mistake of the law, said: "Lord Mansfield's *dictum* is, that money paid by mistake, which could not be claimed in conscience, might be recovered back. I have, however, considerable difficulty in saying that there was anything unconscientious in Admiral Dacres in requiring this money to be paid to him, or receiving it when it was paid." Chambre, J., was of the

opinion that the plaintiff ought to recover, and sustained his views by an able and elaborate argument. He said: "The plaintiff had a right to it, and the defendant in conscience ought not to retain it. The rule is, that when he cannot in conscience retain it he must refund it, if there is nothing illegal in the transaction; the case is different where there is an illegality." Heath, J., said: "It is very difficult to say that there is any evidence of ignorance of the law here." He put his decision on the ground of a voluntary acquiescence in the demand on the part of the plaintiff. Mansfield, C. J., said: "If it was against his conscience to retain this money, according to the doctrine of Lord Kenyon, an action might be maintained to recover it back; but I do not see how the retaining of this is against his conscience. * * * This, then, being so, the admiral doing no more than all admirals do, is it against his conscience for him to retain it? I find nothing contrary to *æquum et bonum* to bring it within the case of Moses *vs.* Macfarlane, in his retaining it. So far from its being contrary to *æquum et bonum*, I think it would be most contrary to *æquum et bonum* if he were obliged to repay it back." It was upon this ground that he denied the plaintiff's right to recover. It is apparent, therefore, that the decision in this case is not at all in conflict with that in the case of Northrop *vs.* Graves.

In the case of Hunt *vs.* Rousmanier, 8 Wheaton R., 215, Marshall, C. J., said: "Although we do not find the naked principle, that relief may be granted on account of ignorance of law, asserted in the books, we find no case in which it has been decided that a plain and acknowledged mistake in law is beyond the reach of equity." Again: "In this case the fact of mistake is placed beyond any controversy. It is averred in the bill and admitted by the demurrer, that the powers of attorney were given by the said Rousmanier, and received by the said Hunt, under the belief that they were, and with the intention that they should create, a specific lien and security on the said vessels.

"We find no case which we think precisely in point, and are unwilling, where the effect of the instrument is acknowledged to have been entirely misunderstood by both parties, to say that a court of equity is incapable of affording relief."

This case came again before the Supreme Court of the United States, and the decision then made was entirely consistent with the doctrine in the cases of Northrop *vs.* Graves, and Steadwell *vs.* Anderson. The court say: "If all other difficulties were out of the way, the equity of the general creditors to be paid their debts equally with the plaintiff would, we think, be sufficient to induce the court to leave the parties where the law has placed them."—(1 Peters' R., 1. 17.)

In the case of Bank of United States *vs.* Daniel, 12 Peters' R., 32, 55–6, the court say: "That *mere* mistakes of law were not remediable is well established, as was declared by this court in Hunt *vs.* Rousmanier, 1 Peters, 15; and we can only repeat what was there said, 'that whatever exceptions there may be to the rule, they will be found few in number and to have something peculiar in their character,' and to involve other elements of decision." There were other elements in that case. (1.) The court expressly say: "The equities of the parties *being* equal, to say the least, it cannot be against conscience for the

appellants to retain their judgment;" and (2) the claim was barred by the statute of limitations. So far as this case goes, it rather sustains than is inconsistent with the doctrine of the case of Northrop *vs.* Graves.

In the case of Wheeler *vs.* Smith, 9 How. R., 55, a release from an heir-at-law to executors, made under a mistake of law and some undue influence, was set aside, though a large but inadequate consideration was paid. There was no fraudulent intent in the transaction on the part of the executors. "The influences operating upon the mind of the complainant induced him to sacrifice his interests. He did not act freely and with a proper understanding of his rights." The release was the result of a compromise, but the undue influence rendered it unconscientious for the executors to retain the benefit of it, and it was declared invalid.

One of the questions submitted to the Supreme Court for their decision in the case of Elliott *vs.* Swartwout, 10 Peters R., 137, was, whether a collector is personally liable in an action to recover back an excess of duties paid to him as collector, and by him in the regular or ordinary course of his duty paid into the treasury of the United States; he, the collector, acting in good faith, and under instructions from the Treasury Department, and no protest being made at the time of payment, or notice not to pay the money over, or intention to sue to recover back the amount given him. To this question the court very properly responded in the negative. But the learned judge who delivered the opinion of the court went further and said: "The case put in the question is one where no suit will lie at all. It is the case of a voluntary payment under a mistake of law, and the money paid over into the treasury; and if any redress is to be had, it must be by application to the favor of the government, and not on the ground of a legal right." It might be sufficient to say of these remarks, that they are mere *dicta*. That they are so is sufficiently obvious. But their propriety depends entirely upon the sense in which the learned judge understood the question which he was considering. It is plain from his subsequent remarks, that he considered the question as presenting a case analogous to that presented by Mr. Justice Gibbs, in Brisbane *vs.* Dacres, 5 Taunt. R., 144, namely, where one man demands money of another, as matter of right, and that other, with a full knowledge of the facts upon which the demand is founded, has paid a sum of money voluntarily. Such a case presents no question of mistake either of *law* or of *fact*, and the payment being *voluntary* and, therefore, a *gift* to the party receiving it, the money might be honestly and conscientiously received and retained.

But not only was the money, in this case, paid for duties not imposed by law, under an actual mistake of the law, made directly with reference to the law itself, in a manner which renders it unconscientious for the United States to retain it; but it was paid under a moral duress, and for that reason cannot be regarded as voluntary. The parties did not stand on an equal footing. The property of the petitioners was in the possession of the collector, and the only means by which they could regain it, was either to pay the duties unlawfully demanded, or to tender the amount actually due and institute an action

at law against the collector for its recovery. The horns of a dilemma were presented to them, and they were allowed perfect *freedom* of will to impale themselves on whichever they pleased. The alternative presented to them was but the choice of two evils, both of which were illegally imposed upon them. To say that a commercial man, the success of whose business depends upon the activity with which it is prosecuted, in submitting to an unlawful demand of duties under such circumstances, makes the payment *voluntarily* and *gives* the money to the United States, is, it seems to us, a gross perversion of both truth and justice. A payment cannot be a *gift* unless it be *voluntary*, and it cannot be *voluntary* unless it be made in the exercise of a *free* will. There is no freedom of volition in such a case. From the time of the leading case of Astley *vs.* Reynolds, 2 Strange R., 915, down to that of Steele *vs.* Williams, 20 Eng. Law & Eq. R., 319, the authorities have been uniform and consistent, that such a payment is involuntary and the money may be recovered back.

In the case of Astley *vs.* Reynolds, the plaintiff pawned his goods with the defendant, and, in order to regain possession of them, paid him usurious interest. He was allowed to recover the excess over the legal interest. "We think also," said the court, "that this is a payment by compulsion. The plaintiff might have such an immediate want of his goods that an action of trover would not do his business. Where the rule, *volenti non fit injuria*, is applied, it must be where the party had his freedom of exercising his will, which this man had not."—(2 Strange R., 916.)

The case of ——— *vs.* Pigott, mentioned by Lord Kenyon in Cartwright *vs.* Rowley, 2 Esp. N. P. C., 723, was an action brought to recover back money paid to the steward of a manor for producing at a trial some deeds and court rolls, for which he had charged extravagantly. The objection was taken that the money had been voluntarily paid, and so could not be recovered back again; but, it appearing that the party could not do without the deeds, so that the money was paid through necessity and the urgency of the case, it was held to be recoverable.—(See, also, Parker *vs.* Great Western R. Co., 7 Mann. & Gr. R., 292.)

In the case of Close *vs.* Phipps, 7 Mann. & Gr., 586, the solicitor of a mortgagee, with a power of sale, refused to stop the sale, though the principal and interest of the debt, together with the defendant's costs, were tendered, unless the mortgager would pay expenses, with which she was not properly chargeable. The amount being paid under protest, it was allowed to be recovered back: "The money was obtained by what the law would call *duress*, as the plaintiff was obliged either to pay it or to suffer her estate to be sold, and incur the expense and risk of a bill in equity."

In the case of Shaw *vs.* Woodcock, 7 Barn. & Cress. R., 73, Bayley, J., said: "If a party has in his possession goods or other property belonging to another, and refuses to deliver such property to that other, unless the latter pays him a sum of money which he has no right to receive, and the latter, in order to obtain possession of his property, pays that sum, the money so paid is a payment made by compulsion and may be recovered back." In the same case Holroyd,

J., said: "Upon the question whether a payment be voluntary or not, the law is quite clear. If a party making the payment is obliged to pay, in order to obtain possession of things to which he is entitled, the money so paid is not a voluntary but a compulsory payment, and may be recovered back; and if the plaintiff below, therefore, was compelled to make the payment in question in order to get the policies of insurance, whether there was a pressing necessity or not, he has a right to recover it back."

In the case of Boston and Sandwich Glass Co. *vs.* City of Boston, 4 Metcalfe R., 181, it was held, that payment of taxes to a collector, who has a tax bill and warrant in the form prescribed by law, is to be regarded as a compulsory payment; and if such taxes were assessed without authority they may be recovered back in an action for money had and received, although the party made no protest before payment. See, also, Amesbury Woolen and Cotton Man. Co. *vs.* Inhabitants of Amesbury, 17 Mass. R , 461, and Preston *vs.* City of Boston, 12 Pick., 7. The rule arises from the power and authority placed in the hands of a collector of taxes, by virtue of his warrant, to levy directly upon the property or person of every individual whose name is borne on the tax list, in default of payment of the taxes.

In the case of Oates *vs.* Hudson, 6 Wels. H. & G., 346, 348, Parke, B., said: "In Atlee *vs.* Backhouse, 3 M. & W., 633, it is correctly laid down, that in order to avoid a contract by reason of duress, it must be duress of a man's person, not of his goods; but that where a sum of money is paid simply to obtain possession of goods which are wrongfully obtained, that may be recovered back, for it is not a voluntary payment. Pratt *vs.* Vizard, 5 B. & Ad., 808, is an authority to the same effect."

In the case of Ripley *vs.* Gelston, 9 Johns. R., 201, tonnage money wrongfully demanded by the collector of the plaintiff as a condition of the clearance of his vessel, and paid in order to obtain the clearance, was recovered back of the collector. And so in the case of Clinton *vs.* Strong, ibid., 370, money paid by the plaintiff to a marshal for costs which were illegally demanded, in order to obtain possession of their vessel, was recovered back. The court say: "The payment of the costs could not be considered a voluntary act. They were exacted by the officer, *colore officii*, as a condition of the redelivery of the property. It would lead to the grossest abuse to hold payment made under such circumstances a voluntary payment, precluding the party from contesting it afterwards."

In the case of Steele *vs.* Williams, 20 Eng. Law & Eq., 319, the plaintiff applied to the defendant, a parish clerk, for liberty to search the register book of burials and baptisms. He told the defendant that he did not want certificates, but only to make extracts. The defendant said the charge would be the same whether he made extracts or had certificates. The plaintiff searched through four years and made twenty-five extracts, for which the defendant charged fees, which the plaintiff paid. Held, that the charge for extracts was illegal, and that the payment was not voluntary, so as to preclude the plaintiff from recovering back the money. Barons, Platt, and Martin concurred in the opinion, that when money is paid under an illegal demand, *colore officii*, the payment can never be voluntary.

In the case of Alstan *vs.* Durant (2 Strobhart's R., 257) it was held that the payment of money exacted by a sheriff, *colore officii*, beyond his legal fees, as a condition of the delivery of the plaintiff's runaway slave, is not a voluntary payment, precluding the plaintiff from contesting it afterwards. The learned judge who delivered the opinion of the court, said: "It will appear hereafter that we attach much consequence to the fact that the party defendant here was a sheriff, and, as it appears to us, should be regarded as acting *colore officii*, and not *virtute officii*, in demanding and receiving a sum of money to which he was not entitled. In my opinion, however, there is both reason and authority for the principle, as applicable to persons in their private individual relations, that if undue advantage be taken by one of another's situation, the first having property of the last in his possession which he illegally retains and refuses to deliver unless a sum of money be paid to him to which he has no legal or conscientious right, this is a fraud, a species of compulsion, and the money ought to be recoverable."—(Ibid., 260.) Upon a review of the authorities he came to the following conclusion: "I think, therefore, there is warrant enough, upon authority, to say that where one man, in any capacity, avails himself of the possession of another's goods, to wring from that other an unlawful payment of money as the condition, and the only one, upon which the goods will be restored, such payment shall not be voluntary in the eye of the law."—(Ibid., p. 264.)

In further commenting on that case, the learned judge said: "For all essential results, here was a public officer acting as a judge in his own case, with power to enforce his judgment, or else to drive the adverse party to a much greater sacrifice, it may be, and thus wresting from the citizen a sum of money which *ex æquo et bono* he could neither receive nor retain. There must be a clear difference between the case of a public officer withholding, of his own mere motion, the rights of a private person, and the demand of one private citizen against another, with no power beyond the ordinary modes of legal proceeding to vest and enforce it, acquiesced in though unlawful."—(Ibid., 265.)

Other cases to the same effect might be cited, but these are deemed sufficient to sustain the declaration with which we set out, that from the time of the leading case of Astley *vs.* Reynolds down to that of Steele *vs.* Williams, the authorities have uniformly and consistently sustained the doctrine, that a payment made under circumstances like those of the present case, is compulsory, and the money may be recovered back.

It seems to us, therefore, that the petitioners are entitled to relief.

We shall report to Congress a bill in favor of the petitioners for the sum of two thousand and sixty-eight dollars.

STURGES, BENNETT & CO. *vs.* UNITED STATES.

The dissenting opinion was delivered by Judge BLACKFORD.

I am obliged to dissent from the judgment of the court in this case. The petition attached to this opinion shows the grounds of the

claim. The duties sued for were collected during the years 1847, 1848, 1849, 1850, and 1851.

The petition, in my opinion, is defective, because it does not allege that any of the duties were paid *under protest*. The act of Congress of 1845, chapter 22, prohibits any suit against a collector for overpaid duties, if the payment was made without protest. That point is expressly decided by the circuit court of the United States for the Maryland district, at the April term, 1849, in Brune *vs.* Marriott. In that case the protest was not made until *after* some of the duties were paid, and the decision was, that for such of the duties there could be no recovery. The language of the court is as follows: "The remaining question is, what duties were paid under protest within the meaning of the act of 1845? That act requires that the protest shall be made in writing, signed by the claimant, at or before the payment of the duties, and set forth, distinctly and specifically, the grounds of objection. The protest of April 9, 1847, cannot apply to the payments previously made, and the plaintiff is not entitled to recover them. But it is sufficient to cover all subsequent payments," &c.

If there has been a protest, the suit is allowed, as the statute expressly says, in order "to ascertain and try the legality and validity of such demand and payment of duties." I consider that statute to be as applicable to a suit in this court against the government for over paid duties as it is to a suit for that cause in any other court against the collector. The object of both suits is the same—namely, to ascertain and try the legality and validity of the demand and payment of duties alleged to have been over paid. If such demand and payment of duties were legal and valid, the importer cannot, in a court professing to be governed by legal principles, recover those duties, either from the collector or from the government. That appears to me to be a clear proposition. Congress has thought proper, by the law of 1845, to prescribe a certain rule for the collector and importer relative to the collection of duties; and whilst the law is in force that rule must be complied with. The rule is, that if the importer wishes to object to the amount of duty charged, the objection must be made at or before the payment of the duty. If no objection be made within the time limited by law, the demand and payment of the duty must be considered legal and valid.

It will be observed that the statute of 1845, which prohibits any suit for over paid duties, unless there has been a sufficient protest, applies to duties of every description, without exception.—(5 Stat. at Large, 727.) The effect of this statute relative to the protest is clearly stated in an opinion delivered by Chief Justice Taney in 1849. His language is as follows: "The protest is not required to be made on or before the payment of what are called the estimated duties. For this payment is necessarily regulated by the invoice quantity, as well as the invoice price. The importer cannot, at that time, know whether there has been any loss by leakage; nor can he know, after it has been ascertained by the weigher and gauger, whether the collector will exact duties upon the amount stated in the invoice.

"The payment is legally made when the duties are finally determined, and the amount assessed by the collector; and a protest before

or at that time is sufficient notice, as it warns the collector, before he renders his account to the Treasury Department, that he will be held personally responsible if the portion disputed is not legally due, and that the claimant means to assert his right in a court of justice.

"The payment of the money upon the estimated duties is rather in the nature of a pledge or deposit than a payment. For it remains in the hands of the proper officer, subject to the final assessment of the duties; and if more has been paid than is due, (which is most commonly the case,) the overplus belongs to the importer, and is returned to him."—(Brune *vs.* Marriott, before cited.) The Supreme Court affirmed that judgment, using, as to the protest, the following languge: "But where the duties had not been closed up in any cases, when the written protest, in April, was filed—though the preliminary payment of the estimated duties had taken place—the court justly considered the protest valid. Because, till the final adjustment, the money remains in the hands of the collector, and is not accounted for with the government, and more may be necessary to be paid by the importer."—(Marriott *vs.* Brune, 9 How., 619, 636.)

The law is therefore settled, that under the aforesaid statute of 1845 the importer is not required to make his protest until after the weigher or gauger has made his return, and the importer has had a full opportunity to know what that return is, and for what sum he is legally chargeable. That being the law, it is clear that there can be no hardship or injustice in requiring the protest. But, on the other hand, if at any distance of time after duties have been paid without objection, and with a full opportunity of knowing the facts, the United States are to be subject to be called upon for alleged over paid duties, there will be no end to the evils that will ensue.

The language of the Supreme Court of the United States in 1851, with respect to the question now under consideration, is as follows: "But it is proper to say, in order that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted, the court mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of objection. Where no such protest is made, the duties are not illegally exacted, in the legal sense of the term; for the law has confided to the Secretary of the Treasury the power of deciding, in the first instance, upon the amount of duties due on the importation. And if the party acquiesces, and does not, by his protest, appeal to the judicial tribunals, the duty paid is not illegally exacted, but is paid in obedience to the decision of the tribunal to which the law has confided the power of deciding the question.

"Money is often paid under the decision of an inferior court, without appeal, upon the construction of a law which is afterwards, in some other case, in a higher and superior court determined to have been an erroneous construction. But money thus paid is not illegally exacted. Nor are duties illegally exacted where they are paid under the decision of the collector, sanctioned by the Secretary of the Treasury, and without appealing from that decision to the judicial tribunals by a proper and legal protest. Nor are they within the principle decided in the case before us."—Lawrence *vs.*

Caswell, 13 Howard, 488, 496. That is the unanimous opinion of the highest judicial tribunal in the United States, on the precise question now before us. It is the opinion of that court on the meaning of the act of Congress of 1845, before referred to. That opinion is, that duties paid *without protest*, as the duties in the case before us were paid, are not illegally exacted. And, surely, if the duties now sued for were not illegally exacted, that is, if the collection of those duties was lawful, the claimants can have no right, in a court of justice, to recover them back, either from the collector or from the government.

My opinion is, therefore, that the petition shows no ground for relief.

STURGES, BENNETT & CO. *vs.* THE UNITED STATES.

Judge Blackford's dissenting opinion.

Suit for over paid duties.

I dissent from the final judgment rendered in this case by the majority of the court in favor of the claimants.

The ground of my dissent is, that the duties sued for were paid without protest.—(See act of Congress of 1845, 5 Stat. at Large, 727; Marriott *vs.* Brune, 9 Howard, 619, 636; Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

The reasons for my dissent are given at length in the opinion heretofore delivered by me, in this case, on the question as to the validity of the petition; which opinion is hereto appended and made part of this opinion.

The dissenting opinions heretofore delivered by me in the cases of Beatty's Executor *vs.* The United States, Spence & Reid *vs.* The United States, and Wood *vs.* The United States, are also hereto appended, and referred to as a part of this opinion.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 279.

IN THE SENATE OF THE UNITED STATES.

AUGUST 8, 1856.—Ordered to be printed.

Mr. WILSON made the following

REPORT.

[To accompany Bill H. R. 354.]

The Committee on Private Land Claims, to which was referred House Bill 354, "for the relief of Benjamin La Fonte, William Altenburg, and others," adopt as their own the report from the House Committee on Private Land Claims, submitted by Mr. Thorington on May 23, 1856, and, for the reasons therein set forth, the committee believe the claimants ought to have the relief provided in said bill, they therefore report back the same, without amendment, and recommend its passage.

Mr. THORINGTON, from the Committee on Private Land Claims, made the following report.

The Committee on Private Land Claims, to whom were submitted the petitions of Benjamin La Fonte, William Altenburg, William Davern, and Louis Larive, made the following report:

It appears that a part of what is now the Territory of Minnesota was surveyed before the organization of its territorial government, and while it was a portion of Wisconsin. The act organizing the Territory of Wisconsin reserved for public school purposes the 15th section only in each township, while that of Minnesota reserves the 16th and 36th sections for the same purposes. It appears that the petitioners had settled on the 36th sections prior to or about the time of the passage of the act organizing the Territory of Minnesota, and in ignorance of the provisions of said act, and they therefore pray for relief.

On examination it appears that relief has been granted in cases similar, and that the Commissioner of the General Land Office has recommended the same. It also appears that in the other Territories of the United States there is relief by a general law in such cases. It appears further, that the said petitioners have each resided on the quarter section they claim from four to thirteen years; that each has a family, and all are poor; and it appearing, finally, that they made their settlements in good faith, your committee recommend the passage of the bills herewith reported for their relief.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 280.

IN THE SENATE OF THE UNITED STATES.

AUGUST 11, 1856.—Ordered to be printed.

Mr. FESSENDEN made the following

REPORT.

[To accompany Bill S. 433.]

The Committee on Patents and the Patent Office, to whom was referred the memorial of Edward Harte, have had the same under consideration, and report:

That in the year 1852, Mr. Harte was employed as a clerk in the Census Bureau, and while thus employed he prepared certain papers, consisting of a statistical article, illustrating the progress of "Agriculture in this country during ten years," and an article entitled "Railroads of the United States in 1850." These articles involved, in their preparation very considerable labor, and your committee think the amount charged for their preparation not unreasonable. The amount demanded for both articles is $274 80.

Mr. Harte alleges that these papers were prepared by him at the request of Mr. Ewbank for the purposes of his agricultural report, he being then Commissioner of Patents, who promised to pay him for them what they were reasonably worth. In proof of this he shows that they were received at the Patent Office, and that they were copied by direction of the chief clerk, and the expense thereof paid out of the Patent Office fund. He also shows that the material thus prepared by him was used by the Commissioner, though the articles themselves were not published in the report.

Under these circumstances the committee are satisfied that Mr. Harte performed the services at the request of the Commissioner, and as he has not been paid for them, a bill for his relief is herewith submitted.

4TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 281.

IN THE SENATE OF THE UNITED STATES.

AUGUST 11, 1856.—Ordered to be printed.

Mr. PEARCE made the following

REPORT.

[To accompany Joint Resolution H. R. 11.]

'he Committee on the Library, to whom was referred the resolution of the House of Representatives No. 11, *report:*

That they concur in the opinion that it is quite proper to recognize he merit of Dr. Kane's arduous arctic expedition by the presentation o him, his officers, and crew, medals as proposed in the second section f the resolution. Such testimonials are appropriate rewards for old enterprizes which are prompted by a zeal for scientific discovery nd a generous spirit of humanity; and thus, whether the sacrifices ıade, the perils incurred, and the objects attained, were the result of ·ders of the government, or of voluntary and individual effort—

Recognizing Dr. Kane's voyage as one which does great honor to is own intrepid spirit, his zeal for geographical discovery, and his enerous benevolence, as well as to the national reputation, the comıittee cordially recommend a concurrence in the first resolution.

They regret that they cannot recommend the adoption of the first ranch of the resolution, which proposes the purchase of 15,000 ›pies of the narrative which he is about to publish. This would ›sult in an expenditure of $75,000 and in the establishment of new precedent, for which there are no adequate reasons such as ave heretofore induced Congress to publish, for distribution, their wn public documents, or to subscribe for works having a direct relaon to the affairs of government. The proceedings of Congress, and ıe reports of government officers on business of the nation, are pubshed, as well for the use of Congress itself, and of persons connected ith the government, as for the information of the constituents of ongress—the people—who ought to have, and cannot otherwise proıre the means of knowing the history of public affairs. And even › this there is a necessary limit, which, except in special cases of eculiar importance, seldom allows the publication of as many as 5,000 copies of any public document. In other cases Congress has ıbscribed for or purchased a still smaller number of volumes, relating › our legislative or revolutionary history, or to our national statistics, hich were supposed to be important aids to our statesmen in the ›rformance of their public duties. Sometimes they have purchased

the works of our revolutionary fathers because they were understood to throw peculiar light upon our early public history, or to have some special importance and value in the consideration of great public questions. For these reasons we have bought such works as Seybert's Statistics, the State Papers, Revolutionary Archives, the writings of Jefferson, Hamilton, John Adams, &c.

In one case only have large numbers been purchased for general popular distribution, Hickey's Constitution; which, besides that instrument itself, contained various other papers, giving in the whole a sort of rudimentary constitutional history. But in no case, so far as the committee are aware, has Congress, in its purchases of books, passed beyond the limits of the subjects indicated. Of the works of the exploring expedition, which was sent out by the government itself for the purposes of oceanic discovery and scientific collection, only 100 copies were ordered to be printed, and these have been distributed, with a few exceptions, only to States of the Union and foreign governments.

The precedent now proposed to be set might, and probably would, lead us into a wide field of literary patronage, inconsistent with the objects of government, and entailing an expense not to be endured. Following this precedent, we might be called on to subscribe for the travels of our diplomats abroad, the voyages of our naval officers on distant seas, or works prepared by our military men who may be sent to foreign countries to inquire into the state of the art of war, the science of engineering, &c. Supposing them to be men of great merit, they would have an equal claim to patronage. It is manifest how improper and how liable to partiality and abuse such a system would be; as well, too, might the government undertake to supply the people of the United States with information in all the departments of general knowledge, as with works on arctic exploration and discovery.

The enterprise of Dr. Kane, though prompted by high impulses, conducted with singular heroism amidst great perils, and crowned with honorable success, in many respects was merely a private one, neither ordered nor induced by the government, although aided, in some degree, by the Navy Department. The publication of his narrative is also a private enterprise, for patronizing which, especially to the degree proposed, the committee can see no adequate reason.

In view of the whole subject, they recommend the amendment following: Strike out the first section of the resolution after the resolving clause, and also the first line of section 2 to the word "aforesaid," inclusive.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 282.

IN THE SENATE OF THE UNITED STATES.

AUGUST 11, 1856.—Ordered to be printed, together with the views of the minority.

Mr. DOUGLAS made the following

REPORT.

[To accompany bill H. R. 75.]

The Committee on Territories, to whom was referred a bill from the House of Representatives, for "An act to reorganize the Territory of Kansas, and for other purposes," beg leave to report:

The first section of the bill provides, "That all that part of the Territory of the United States which lies between the parallels of thirty-six degrees and thirty minutes and forty degrees of north latitude, and which is east of the eastern boundary of the Territory of Utah to the southeast corner thereof, and east of a line thence due south to the said parallel of thirty-six degrees thirty minutes north latitude, and is bounded on the east by the western boundary of the State of Missouri, shall constitute one Territory, and shall be, and hereby is, constituted and organized into a temporary government, by the name of the Territory of Kansas."

By reference to the map it will be perceived that, in addition to all the country embraced within the limits of the present Territory of Kansas, it is proposed to include in the new Territory all the country between the southern boundary of the Territory, as now defined by law, and the parallel of 36° 30′, extending from the western boundary of the State of Missouri across more than twelve and a half degrees of longitude, and being about thirty-five miles in width at the eastern, and one hundred and five at the western extremity. The eastern portion of this strip of country, which it is now proposed to incorporate within, and render subject to the jurisdiction of, the Territory of Kansas, was ceded with other territory to the Cherokee Indians, by the treaties of the 6th of May, 1828, April 12th, 1833, and May 23, 1836, for "*a permanent home, and which shall, under the most solemn guarantee of the United States, be and remain theirs forever*—A HOME THAT SHALL NEVER, IN ALL FUTURE TIME, BE EMBARRASSED BY HAVING EXTENDED AROUND IT THE LINES, OR PLACED OVER IT THE JURISDICTION OF A TERRITORY OR STATE, *nor be pressed upon by* the extension *in any way of any of the* limits of any existing Territory or State."

In view of this "most solemn guaranty of the United States" to the Cherokees, your committee cannot refrain from the expression of the hope and belief that the House of Representatives, in passing a

bill to extend around this Indian country the lines of Kansas, and render it subject to the jurisdiction of that Territory, acted without due consideration, and probably without a full knowledge of these treaty stipulations. When the organic act of Kansas was passed in 1854, the parallel of thirty-seven was fixed upon as the southern boundary of the Territory instead of the line of thirty-six degrees and thirty minutes, with the view to the preservation of faith on the part of the United States towards these Indians; and lest injustice might be done to other Indian tribes who held their lands under treaties with the United States, it was expressly provided, "That nothing in this act contained shall be construed to impair the rights of persons or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; *but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Kansas.*" In these considerations your committee find insuperable objections to that portion of the bill from the House of Representatives which proposes to include within the limits, and render subject to the jurisdiction of the Territory of Kansas, any part of the country which is thus secured to the Indians by solemn treaty stipulations.

Nor are the objections less formidable to incorporating within the limits of Kansas that portion of the Territory of New Mexico which lies north of the line of 36° 30′, and east of the Rio Grande, and subjecting it to the operation of the other provisions of the bill. That part of New Mexico, containing about 15,000 square miles, was purchased from Texas by one of the acts known as the compromise measures of 1850, and formed a part of the territory for which the United States paid the State of Texas ten millions of dollars. The second section of the act of Congress which contains the terms and conditions of the compact between the United States and Texas for the purchase of that Territory, incorporates the same in the Territory of New Mexico, with the following guarantee: "*And provided further, that when admitted as a State*, the said Territory, or any portion of the same, shall be received into the Union with *or without slavery, as their constitution may prescribe at the time of their admission.*"

After asserting this great principle of State equality as applicable to every portion of New Mexico under the Constitution, and as guarantied in the compact with Texas, by fair intendment, so far as the country was acquired from that State, the seventh section of the same act provides that the legislative power of the said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act"—thus leaving the people perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution. It is now proposed in the bill under consideration to repudiate these guarantees and violate these great fundamental principles, by annexing to Kansas all that portion of the country acquired from Texas which lies north of 36° 30′, and imposing upon it a prohibition of slavery for-

ver, from and after the first day of January, 1858, regardless of the ghts and wishes of the people who may inhabit the Territory.

The twenty-fourth section of the bill is in the following words:

SEC. 24. *And be it further enacted*, That so much of the fourteenth ction, and also so much of the thirty-second section, of the act assed at the first session of the thirty-third Congress, commonly nown as the Kansas-Nebraska act, as reads as follows, to wit: "Ex-pt the eighth section of the act preparatory to the admission of issouri into the Union, approved March 6, 1820, which, being in-nsistent with the principles of non-intervention by Congress with avery in the States and Territories, as recognized by the legislation 1850, commonly called the compromise measures, is hereby declared noperative and void; it being the true intent and meaning of this act ot to legislate slavery into any Territory or State, nor to exclude it nerefrom, but to leave the people thereof perfectly free to form and gulate their domestic institutions in their own way, subject only to ne Constitution of the United States: *Provided*, That nothing herein ontained shall be construed to revive or put in force any law or regu-ation which may have existed prior to the act of 6th March, 1820, ther protecting, establishing, prohibiting or abolishing slavery— e and the same is hereby repealed; and the said eighth section of aid act of 6th March, 1820, is hereby revived and declared to be in ll force and effect within the said Territories of Kansas and Ne-raska: *Provided, however*, That any person lawfully held to service either of said Territories shall not be discharged from such service reason of such repeal and revival of said eighth section, if such erson shall be permanently removed from such Territory or Territo-es prior to the 1st day of January, 1858; and any child or children orn in either of said Territories, of any female lawfully held to ser-ce, if in like manner removed without said Territories before the ex-ration of that date, shall not be, by reason of anything in this act, nancipated from any service it might have owed had this act never een passed: *And provided, further*, That any person lawfully held to rvice in any other State or Territory of the United States, and caping into either the Territory of Kansas or Nebraska, may be re-aimed and removed to the person or place where such service is due, nder any law of the United States which shall be in force upon the ubject."

In the opinion of your committee there are various grave and serious ojections to this section of the bill. In the first place, it expressly pudiates and condemns the great fundamental principles of self-overnment and State equality which it was the paramount object of ne Kansas-Nebraska act to maintain and perpetuate, as affirmed in ne following provision: "It being the true intent and meaning of his act not to legislate slavery into any Territory or State, nor to xclude it therefrom, but to leave the people thereof perfectly free to rm and regulate their domestic institutions in their own way, sub-ct only to the Constitution of the United States."

Not content with repealing this wise and just provision, and con-emning the sound constitutional principles asserted in it, the bill roceeds to legalize and establish, for a limited time, hereditary

slavery, not only in the Territory of Kansas, (where there is no other local or affirmative law protecting it than the enactments of the Kansas Territorial legislature, which have been alleged to be illegal and void, and which the House of Representatives, by amendments to the appropriation bills, have instructed the President not to enforce,) but also in all that part of New Mexico which it is proposed to incorporate in the Territory of Kansas, and where slavery was prohibited by the Mexican law, and it is not pretended that there is any territorial enactment recognizing or establishing it. Having thus asserted and exercised the power of introducing and establishing slavery in the Territories by act of Congress, and declaring children hereafter born therein to be slaves for life and their posterity after them, provided they shall be removed therefrom within a specified period, the bill proceeds to affirm and exercise the power of prohibiting slavery in the same Territories forever from and after January 1, 1858, by enacting and putting in force the following provision, being the 8th section of the act passed March 6, 1820, to wit:

"SECTION 8. *And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crime, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid."

It will be observed that this 8th section of the Missouri act (commonly called the Missouri compromise) by its terms only applied to the territory acquired from France, known as the Louisiana purchase, the western boundary of which was defined by the treaty with Spain in 1819, and subsequently by treaties with Mexico and Texas, to be the 100th meridian of longitude, while the bill under consideration, under the guise of reviving and restoring that provision, extends it more than seven degrees of longitude further westward, and applies it to that large extent of territory to which it had no application in its original enactment. Nor can it be said with fairness or truth that this provision was applied to any portion of the territory in question by the "joint resolution for annexing Texas to the United States," for the reason that the whole territory embraced within the limits of the republic of Texas was admitted into the Union as one State, with the privilege of forming not exceeding four other States out of the State of Texas, "by the consent of said State," with the condition that "in such State or States as should be formed out of said territory, north of said Missouri compromise line, slavery or involuntary servitude (except for crime) shall be prohibited."

It was left discretionary with Texas to remain forever one State, and to retain the whole of her territory as slave territory, or to consent to a division, in which case the prohibition would take effect, by virtue of the compact, from the date of the formation of a new State

within the limits of the republic of Texas, north of 36° 30′. If, on the contrary, Texas should determine to withhold her assent, no such new State could ever be formed, and hence the prohibition would never take effect. All difficulty, however, on this point, has been removed by the act of 1850, purchasing from Texas all that portion of her territory lying north of 36° 30′, and incorporating it in the Territory of New Mexico, with the guarantee that "when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of admission." Hence all that territory, to which it is now proposed to apply the Missouri restriction for the first time, under the plea of restoring the Missouri compromise of the 6th of March, 1820, is protected from any such invasion of the rights of the inhabitants to form and regulate their own domestic affairs in their own way, by the solemn guaranties contained in the compromise measures of 1850, which blotted out the geographical line as a dividing line between free territory and slave territory, and substituted for it the cardinal principle of self-government, in accordance with the Constitution. But it will also be observed, that the bill under consideration does not propose to limit the restriction to the territory acquired from Texas, nor the country on the east side of the Rio Grande, but extend it across that river over a portion of the territory acquired from Mexico, which was never claimed by Texas nor embraced within the Louisiana purchase, and to which there is no pretext for asserting that the Missouri compromise ever applied. If, in the application of the 8th section of the act of the 6th of March, 1820, (commonly called the Missouri compromise,) over so large a district of country to which it never had any previous application, it be the policy of the House of Representatives to return to the "obsolete idea" of a geographical line as a dividing line in all time to come between slave territory and free territory, a perpetual barrier against the advancement of slavery on the one hand and free institutions on the other, the measure falls short of accomplishing the whole of their object in not extending the line to the Pacific ocean. Your committee can perceive many weighty considerations founded in policy, although wanting the sanction of sound constitutional principles, which might be urged in favor of such a measure, inasmuch as the barrier once erected from ocean to ocean—permitting slavery on the one side and prohibiting it on the other—if universally acquiesced in and religiously observed as a patriotic offering upon the altar of our common country, would put an end to the controversy forever, and form a bond of peace and brotherhood in the future. But, unfortunately, when this expedient was proposed by the Senate in 1848, it was indignantly repudiated by the House of Representatives, and as a consequence the whole country was plunged into a whirlpool of sectional strife and angry crimination, which alarmed the greatest and purest patriots of the land for the safety of the republic, and was only rescued from the impending perils by the adoption of the compromise measures of 1850, which abandoned the policy of a geographical line, and substituted for it the great principles of self government and State equality, in obedience to the federal Constitu-

tion. In view of the history of the past, your committee can perceive no safety in the future except in a strict and religious fidelity to the true principles of the Constitution as embodied in the adjustment of that unfortunate controversy, and adopted by the whole country as rules of action, to be applied in all future time, when in the progress of events it should be necessary to organize Territories or admit new States. The Kansas-Nebraska act was the logical sequence of the compromise measures of 1850, and rendered imperatively necessary in order to establish and perpetuate the principles of self-government and State equality in the organization of Territories and admission of new States. For these reasons your committee cannot concur with the House of Representatives in the proposition to blot out from the organic act of Kansas and Nebraska those essential provisions and cardinal principles, the faithful observance of which can alone preserve the just rights of the inhabitants of the Territories and maintain the peace, unity, and fraternity of the republic. The great object is to withdraw the slavery question from the halls of Congress and remand its decision to the people of the several States and Territories, subject to no other conditions or restrictions than those imposed by the Constitution of the United States. Those provisions of the bill under consideration which introduce and establish slavery, together with those which abolish and prohibit it, are alike obnoxious on the score of principle, inasmuch as they assert and exercise the right of Congress to form and regulate the local affairs and domestic institutions of a distant and distinct people without their consent and regardless of their rights and wishes. To avoid all misconstruction, however, upon this point, your committee deem it proper to remark that their objections do not apply to that part of the bill which extends the provisions of the fugitive slave law to the Territories of Kansas and Nebraska, and provides "that any person lawfully held to service in any other State or Territory, and escaping into either the Territory of Kansas or Nebraska, may be reclaimed and removed to the person or place where such service is due, under any law of the United States which shall be in force upon the subject." In this clause your committee are rejoiced to find a frank and conscientious acknowledgement of the duty of Congress to provide efficient laws for carrying into faithful execution the provision of the Constitution of the United States which provides for the rendition of fugitive slaves as well as all other obligations imposed by that instrument.

The preservation of our free institutions depend upon a faithful observance of the Constitution in all its parts; and the assurance thus furnished that the representatives of the people are ever ready to provide new and additional guarantees when supposed to be necessary for the faithful performance of that constitutional obligation, which has been the subject of the severest criticism in some portions of the country, cannot fail to gratify every true friend of the Union. In this case, however, no such legislation is necessary, inasmuch as the organic act of Kansas and Nebraska extended the provisions of the fugitive slave law to both of those Territories.

The fifteenth and sixteenth sections of the bill under consideration read as follows:

SEC. 15. *And be it further enacted,* That all suits, process, and pro eedings, civil and criminal, at law and in chancery, and all indictnents and informations which shall be pending and undetermined in he courts of the Territory of Kansas or of New Mexico, when this act hall take effect, shall remain in said courts where pending, to be eard, tried, prosecuted, and determined in such courts as though this ct had not been passed: *Provided, nevertheless,* That all criminal rosecutions now pending in any of the courts of the Territory of Kanas, imputing to any person or persons the crime of treason against the United States, and all criminal prosecutions, by information or inlictment, against any person or persons for any alleged violation or lisregard whatever of what are usually known as the laws of the legislature of Kansas, shall be forthwith dismissed by the courts where uch prosecutions may be pending, and every person who may be restrained of his liberty by reason of any of said prosecutions shall be released therefrom without delay. Nor shall there hereafter be instituted any criminal prosecution in any of the courts of the United States, or of said Territory, against any person or persons, for any such charge of treason in the said Territory prior to the passage of this act, or any violation or disregard of said legislative enactments at any time.

SEC. 16. *And be it further enacted,* That all justices of the peace, constables, sheriffs, and all other judicial and ministerial officers, who shall be in office within the limits of said Territory when this act shall take effect, shall be, and they are hereby, authorized and required to continue to exercise and perform the duties of their respective offices as officers of the Territory of Kansas, temporarily, and until they, or others, shall be duly appointed and qualified to fill their places in the manner herein directed, or until their offices shall be abolished.

It will be observed that these two sections recognize the validity and binding force of the entire code of laws enacted at the Shawnee Mission, by the legislature of Kansas Territory, and provide for the faithful execution of all those enactments except the criminal code. All justices of the peace, constables, sheriffs, and all other judicial and ministerial officers, now in office, are required to continue to exercise and perform the duties of their respective offices. All these officers, with the exception of the governor, three judges, secretary, and marshal, and district attorney, were elected or appointed under the laws enacted by the legislature of Kansas, while their powers, functions, and duties, are all prescribed by those laws and none others. These officers are all required to continue to perform the duties of their respective offices, by observing and enforcing all the laws enacted at the Shawnee Mission, except the criminal code. "All suits, process, and proceedings, civil and criminal, at law and in chancery, and all indictments and informations which shall be pending and undetermined in the courts of the Territory of Kansas or New Mexico, when this act shall take effect, shall remain in said courts where pending, to be heard, tried, prosecuted, and determined, in such courts, AS THOUGH THIS ACT HAD NOT BEEN PASSED." The election laws, and the laws concerning slaves and slavery, and all laws protecting the rights of persons and property, and affecting all the relations of

life, are recognized as valid and required to be enforced, EXCEPTING CRIMINAL PROSECUTIONS, BY INFORMATION OR INDICTMENT, for violating or disregarding the laws of the legislature of Kansas, all such prosecutions are required to be forthwith dismissed, and the prisoners set at liberty, and no new prosecutions are to be commenced for "any violation or disregard of said legislative enactments at any time. Such is the legislation provided for in these two sections of the bill. They recognize the validity of the laws enacted at Shawnee Mission, and provide for the enforcement of all of them except in cases of criminal prosecution. Your committee are unable to perceive how the passage of such a bill would restore peace, quiet, and security, to the people of Kansas. It has been alleged that there are in that Territory organized bands of lawless and desperate men, who are in the constant habit of perpetrating deeds of violence—murdering and plundering the inhabitants, stealing their property, burning their houses, and driving peaceable citizens from the polls on election day, and even from the Territory. The remedy proposed in the bill is to grant to the perpetrators of these crimes a general amnesty for the past, and a full licence in the future to continue their bloody work.

There is no law in force in Kansas by which murder, robbery, larceny, arson, and other crimes known to the criminal codes of all civilized States, can be punished, except under the code enacted by the legislature of Kansas at the Shawnee Mission. The provisions of "an act for the punishment of crimes against the United States," approved April 30, 1790, is, by its terms, confined in its application to such crimes as shall be committed "within any fort, arsenal, dock yard, magazine, or any other place or district of country under the sole and exclusive jurisdiction of the United States," and "upon the high seas and navigable waters out of the jurisdiction of any particular State," but has never been held or construed to apply to the Territories of the United States. The act of the 3d of March, 1817, "to provide for the punishment of crimes and offences committed within the Indian boundaries," extends the provisions of the said act of 1790 to the Indian country, but expressly restricts its application, as its title imports, to crimes committed "within any town, district, or territory *belonging to any nation or nations, tribe or tribes of Indians.*" Hence, the moment the Indian title is extinguished, and the country placed under the jurisdiction of a territorial government, it ceases to be "under the sole and exclusive jurisdiction of the United States," and is no longer subject to the provisions of either of the above cited acts. Thus it will be seen that if the bill from the House of Representatives should become a law with the provisions granting a general amnesty in respect to all past crimes, and unlimited license in the future to perpetrate such outrages as their own bad passions might instigate, there would be no law in force in Kansas to punish the guilty or protect the innocent.

Inasmuch as the House of Representatives, by the passage of the bill under consideration, and the Senate, by its bill for the admission of Kansas into the Union, have each recognized the validity of the laws enacted by the Kansas legislature at Shawnee Mission, so far as they are consistent with the Constitution and the organic act, and

affirmed the propriety and duty of enforcing the same, except in certain specified cases, it becomes important to inquire into the extent of the differences of opinion between the House of Representatives and the Senate, in respect to the particular laws which ought not to be enforced. The Senate has already declared in the bill for the admission of Kansas into the Union that all laws and enactments in said Territory which are repugnant to, or in conflict with, the great principles of liberty and justice, as guarantied by the Constitution of the United States and the organic act, and embodied in the 18th section of that bill, shall be null and void, and that none such shall ever be enforced or executed in said Territory.

The said eighteenth section is in the following words:

"SEC. 18. *And be it further enacted*, That inasmuch as the Constitution of the United States and the organic act of said Territory has secured to the inhabitants thereof certain inalienable rights, of which they cannot be deprived by any legislative enactment, therefore no religious test shall ever be required as a qualification to any office or public trust; no law shall be in force or enforced in said Territory respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and petition for the redress of grievances; the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized; nor shall the rights of the people to keep and bear arms be infringed. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation. In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defence. The privilege of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. No law shall be made or have force or effect in said Territory which shall require a test oath or oath to support any act of Congress or other legislative act as a qualification for any civil office or public trust, or for any em-

ployment or profession, or to serve as a juror or vote at an election, or which shall impose any tax upon or condition to the exercise of the right of suffrage by any qualified voter, or which shall restrain or prohibit the free discussion of any law or subject of legislation in the said Territory, or the free expression of opinion thereon by the people of said Territory."

By this provision of the bill, which has twice passed the Senate, and now remains on the Speaker's table of the House of Representatives unacted upon, and only awaits the favorable action of the House to enable it to become a law with the President's approval, all the obnoxious laws, which have been the subject of so much censure and complaint, are swept out of existence, leaving none in force in said Territory except such as are usual, proper, and necessary in all civilized communities for the protection of life, liberty, and property. Your committee have not yet relinquished the hope that the House of Representatives will concur with the Senate in the passage of that bill, and thus restore peace and security to the people of Kansas, by declaring all those obnoxious laws null and void, and providing for the faithful enforcement of the Kansas code, the validity of which has thus been frankly and solemnly acknowledged by the votes and action of each House of Congress. The two Houses of Congress having, by their action, each arrived at the conclusion that the Kansas code is valid, and that the obnoxious laws referred to ought to be declared inoperative and void, as being repugnant to the principles of liberty and justice intended to be secured by the Constitution of the United States and the Kansas-Nebraska act, it would seem, that the most serious and material point of difference between the two Houses which remains to be adjusted, is whether that part of the Kansas code which provides for the punishment of murder, robbery, larceny, and other criminal offences shall be enforced, or, whether all persons guilty of those offences shall be turned loose to prey upon the community with legalized impunity. It is true that there is, apparently, another point of difference between the two Houses, arising out of the question whether the people of Kansas shall be authorized to elect delegates to a convention, (with proper and satisfactory safe-guards against fraud, violence and illegal voting,) and form a constitution and state government preparatory to their admission into the Union, or whether the Territory shall be reorganized in accordance with the provisions of the bill from the House and left, for some years to come, in that condition. While the House of Representatives has recently expressed its preference for the latter proposition, by the passage of the bill under consideration, your committee are not permitted to assume that they have insuperable objections to the admission of Kansas at this time, for the reason that a few weeks previous they passed a bill to admit that Territory as a State, with the Topeka constitution. Hence the change of policy on the part of the House, in abandoning the State movement with the Topeka constitution, and substituting for it the proposition to reorganize the Territory and leave it in that condition, must be taken only as a strong expression of a decided preference on the part of the House for the bill under consideration, and not as conclusive evidence of insuperable objections to a fair bill, with proper

and suitable guarantees against fraud and illegal voting, to authorize the people of Kansas to form a constitution and State government at this time. While the Senate bill, now pending before the House, is fair and impartial in all its provisions, with ample and satisfactory safe-guards against illegal and fraudulent voting, the bill from the House to reorganize the Territory contains no such provisions and affords no such assurances. It leaves the qualifications of the voters at the first election the same as they were under the Kansas-Nebraska act, with this difference, that it denies the privilege of voting and holding office to all men of foreign birth who shall have declared on oath their intention to become citizens, and who shall have taken an oath to support the Constitution of the United States, but who shall have failed from any cause to have completed their naturalization. The provision is, "that any white male inhabitant, being a citizen of the United States, above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election." No penalties or punishments are provided for illegal voting; none for fraud in conducting the elections; none for violence at the polls; and none for destroying the ballot-boxes. All these things may be done with impunity; for, while the election must be held in pursuance of the existing laws of the Territory, which are recognized as being in force, the bill expressly provides that *no criminal prosecution shall hereafter be instituted* in any of the courts of the *United States or of said Territory for any violation or disregard of said legislative enactment at any time.* Under this bill any number of persons from Missouri or Iowa, from South Carolina or Massachusetts, or from any other part of the world, may enter the Territory on election day and take possession of the polls, and vote as many times as they choose, and drive every legal voter from the polls with entire impunity; for the bill declares that no criminal prosecutions shall ever be instituted in the courts of the United States or of said Territory for violating or disregarding the ONLY LAW which provides penalties and punishments for such outrages in the Territory of Kansas.

No measure can restore peace to Kansas which does not effectually protect the ballot-box against fraud and violence, and impart equal and exact justice to all the inhabitants. Under existing circumstances, your committee are unable to devise any measure which will more certaily accomplish these desirable objects than the bill which has twice passed the Senate, and now only awaits the concurrence of the House of Representatives, with the approval of the President, to become the law of the land.

For these reasons your committee recommend that the bill from the House of Representatives be laid on the table, as a test vote on its rejection, inasmuch as the objections apply to all the leading features and material provisions of the bill, and renders it incapable of amendment without preparing an entire new bill.

IN THE SENATE OF THE UNITED STATES.

AUGUST 11, 1856.

VIEWS OF THE MINORITY.

Mr. Collamer, from the Committee on Territories, to whom was referred a bill from the House of Representatives, "An act to reorganize the Territory of Kansas and for other purposes," submits the following views:

In all legislation, the true, actual condition of the country to which it is to apply, should be, and must be, regarded, in order to ascertain what will be the probable effect of such legislation. What is the present condition of Kansas, for which legislation is now proposed, and what is the legislation adapted to that condition? If its condition is peaceful and prosperous, let it proceed under the laws which has produced, and is advancing, such prosperity. If, on the other hand, it is convulsed with violence, confusion and blood, then it must be equally clear that legislation should change and correct the measures and causes which have produced this condition.

A brief and summary statement of affairs will be amply sufficient for the present purpose. The Territory, on the 30th of March, 1855, the day for the election of the territorial legislature, was invaded by armed bands of men from Missouri, who dispersed themselves into the different election districts, and by force, violence, and intimidation, drove the inhabitants from the polls, and by their own votes, elected the members of the legislature in all of the election districts but one. This legislature, so elected by force and fraud, by the people of Missouri, convened and presumed to legislate for the Territory of Kansas, and to appoint officers to execute their laws. The object of this atrocious invasion and usurpation was open, avowed, and well-known to all; that is, to establish and sustain the institution of domestic slavery in that Territory, thus acknowledging that, if left to themselves, the inhabitants would not receive and promote it. The laws adopted by this usurping legislature were framed, in all their aspects, to secure the same purpose for which it had been elected—to oppress, harass, and exclude all those opposed to slavery then in said Territory, to procure their departure, and to deter all others, entertaining such views, from entering the Territory for settlement.

Under the color of the laws, thus made, the officers of the Territory, and people under their countenance and direction, have performed acts of violence and atrocity shocking to every sentiment of justice and humanity. The Executive of the nation declares that

those laws shall be enforced with the whole power of the government, and the people are informed by the commander of the army there that he cannot protect them even from the lawless acts of the territorial militia and the marshal's and sheriff's posse, because they act under color of law, at the same time it is insisted that if they attempt to protect themselves, it must be treated as resistance to lawful authority.

A large part of the people there justly regard the acts of that usurping legislature as utterly void, and they formed a State constitution to present to Congress for admission as a State, which was adopted by the votes of a large majority of the inhabitants of said Territory, and measures were taken to organize a provisional government under the same, subject to the action of Congress thereon. Congress having yet taken no definitive action, when the people attempted again to hold a meeting, peaceably and unarmed, further to forward that object, they were forcibly dispersed by the United States dragoons. The men who were most active in this matter of a State constitution have been arrested and indicted, and are now held in durance as guilty of treason, or *constructive* treason, and guarded by United States soldiers, under the command of the President of the United States. These proceedings have naturally led to some violent acts of resistance and retaliation, and bad men from a distance have gathered there to take advantage of these scenes of violence to gratify their lawlessness and cupidity. Those laws, and the acts done under color of them, have, in a great measure, had their designed effect, and driven large numbers of the free State and other peaceable people from the Territory. The people of Missouri and others uniting in their purposes, have forcibly turned back large parties of emigrants from the free States, attempting to enter the Territory by the national highway, the Missouri river, and large numbers, in armed bands, are now gathered along the borders of the Territory to guard it against the access of said emigrants by land.

From this condition of that country, so anomalous and unprecedented, so inconsistent with this enlightened age, so injurious to the government of this country, under whose jurisdiction it exists, and so dangerous in its continuance and tendencies, leads us to inquire what cause has produced it. Nothing of this kind has ever before existed in relation to any one of our numerous Territories. The cause is perfectly obvious to every man in our country. It is the novel attempt and experiment to invite people to settle that country under a proclamation to them that they should have it for free or for slave labor as they should themselves determine. In order to enter upon this experiment, Congress, in 1854, vacated the Missouri compromise line, which sequestered all the country north of 36° 30′ to be free from slavery forever. They destroyed that statute of compromise and repose which was the bond of peace for more than the third of a century. They broke up that condition of quietness on the subject of slavery in the Territories, in relation to all which such arrangements had been made as that all parties had submitted to acquiesce. Congress, in the Nebraska-Kansas bill, not only provided that when admitted as States they should be admitted as free or slave States as they should desire,

as had been done in New Mexico, but they proceeded to repeal the Missouri compromise line, which prohibited slavery, and declared that the people should be "perfectly free to form and regulate their domestic institutions in their own way." This was the cause of all the trouble which has since transpired there. The invasion from Missouri, and all the violence and outrage done under color of the laws, so produced, as before stated, are but efforts to *establish slavery* as a domestic institution "*perfectly free and in their own way.*"

Palliation or excuse for this violence and lawlessness is much urged by the President and in the Senate by heaping unfounded execration on the Massachusetts Emigrant Aid Society; but southern emigrants, actually hired by slaveholders' associations, find no difficulty in entering the Territory, and are employed as marshal's posse, under pay. How little of ground existed for the excuses of Missouri violence in the efforts of the Massachusetts Aid Society now most fully appears, when it has been shown by the official census of the Territory, taken the month before the invasion, that of all the adult freemen then in the Territory, amounting to near three thousand, only 163 were from all the New England States.

The condition of the Territory is well calculated to convince every impartial and candid man that it is entirely preposterous to submit any matter affecting the subject of slavery to any vote to be taken by the people now in the Territory.

The free State people have, to a large extent, been driven off. They for some months have been, and they now are, prevented from entering or returning. Those now there may be, and probably will be, run out whenever it is ascertained that such is necessary to determine an election for slavery. Anything like a discussion of that subject is utterly impracticable there, with personal safety. Freedom of the press is prohibited, and the free State presses are, "under color of law," declared nuisances, and destroyed by the marshal and his posse.

The next inquiry is, what is the mode of redress? The President insists that he has no power to inquire into the origin of the Kansas laws, but will do his duty in executing them. He, however, in his message of the 24th of January last, on this subject, represents that matter as proper to be inquired into and decided by the House of Representatives, when deciding on the validity of the election of a delegate chosen under such laws.

The House of Representatives have, accordingly, inquired into the matter with great care, and having found the legislature was elected by a military invasion and fraud, have declared their acts void, and the delegate chosen in virtue thereof has been refused a seat. Still the President does not submit to the decision, nor does he recommend to Congress to make further inquiry. In the Senate it is insisted that these laws are *prima facie*, good and absolutely binding on the Executive and the courts until superseded or repealed by the territorial legislature or by Congress, and yet the Senate entirely decline or neglect to take any measures to inquire as to the truth, that they may afford relief.

The usurpers, therefore, continue in power in Kansas, sustained by the President, and again it is inquired what is the redress?

The Senate has passed a bill for pacification. Its essential features are that certain of the most obnoxious laws of Kansas shall cease, but those in power there shall remain, and the people now there, in the condition now existing, and after all the preparations before described shall, by vote, fix forever the condition of the Territory, as to slavery, by now making a State constitution. It must be obvious that this is but to give to violence, outrage, and atrocity, the reward of all its effort by the consummation of its wishes, domestic slavery forever.

The House of Representatives has passed a bill to admit Kansas under the State constitution adopted by a large majority of its people. This the Senate rejected, again insisting on submitting the matter to the people now there to vote on a constitution in the present condition of the Territory by those they may permit to remain until next November.

The House has now passed a bill, the leading and essential provisions of which are that the Missouri compromise line shall be restored, and the actual inhabitants in the Territory shall proceed to elect a legislature for the Territory.

These are its leading provisions, and all the other details and particulars which it includes are but collateral, and if they are unsatisfactory, they are only proper matter of amendment, but constitute no ground for rejecting the bill. This applies to a large part of the committee's report. It finds fault with provisions which are merely collateral details, and yet no amendment is proposed. If the now proposed boundaries include any part of the Cherokee lands or of New Mexico which ought not to be included, let it be amended. If the criminal laws of Kansas (which really have never been used but to promote the cause of slavery and prosecute and persecute pretended political offenders) should not all be declared inoperative, then adopt the proper amendments. If apparent inconsistencies or incongruities are found in the bill, it should be amended, not rejected on that account. If the bill contains no sufficient security against illegal voting, let them be inserted. If there be serious objection to the provisions in the bill in relation to permitting the slaves now in the Territory, and their children, to be held there or removed until January, 1858, let the same be stricken out or amended. It is no reasonable objection to restoring the Missouri compromise, which was agreed to because it was not, and is not, extended to the Pacific, which never was agreed to.

The essential principle of this bill is the restoration of the Missouri compromise line. Deprived of this it loses all vitality, is eviscerated, and becomes utterly valueless and detrimental. It proposes that the people now there shall proceed to the election of a legislature. This would appear to regard them as suitable to be entrusted with the power of election, and, if so, why not permit them to form a State constitution? The people there may safely be left to the election of a territorial legislature when Congress shall have re-established the law forever forbidding slavery in the Territory, but at the same time they are so conditioned as to be entirely unfitted to the fair and impartial decision of the question of slavery at this time.

The plausible experiment of settling the subject of slavery in a Territory by submitting it to the people who shall thereafter go in to

settle there, is incapable of a peaceful or satisfactory result, however it might be as to one already settled.

The settlement under such a proposition will be made with a view to this object, especially as political importance depends on it. These settlements will be advanced by extreme means and collisions will ensue. The agitation of this subject on the plains and prairies beyond the Mississippi, on the borders of civilized life, will be no more peaceful or conciliatory than in the rest of the country or in the halls of Congress. The application of popular sovereignty to this subject, to be exercised by the people in a Territory, while it is settling and while a Territory, is a delusion. This is what the Missouri compromise line was professedly repealed to try, and the experiment is either an intended duplicity, or it is a failure, and should be frankly and magnanimously abandoned, notwithstanding a national political convention may have endorsed it. It is, however, highly probable that the representatives of the slaveholding States, constituting a majority of the party in power, considering their people regard themselves as having secured an advantage in the Kansas bill, will not abandon the experiment, especially as the slaveholding power has already possession in Kansas, with a President to sustain it. It is true that *power* may, for a time, prevail. The experiment may proceed, the people in Kansas may be *dragooned* into submission, and power may, for a time, continue that vassalage which usurpation produced, but the end is not yet. Can it be expected that a slaveholding State, made such by such atrocities, can ever be admitted into this Union by any votes given by the representatives of a free people?

From the manifestations thus far presented by this experiment, we have full reason to expect that violence will continue so long as this apple of discord is continued in Kansas, and that any question involving it subjected to their solution will "suffer violence, and the violent will take it by force."

If this matter is not settled by Congress by the admission of Kansas as a free State, or the restoration of the compromise line, or some equivalent provision, then this experiment must proceed until the people will elect a President who will stop the execution of laws which usurpation has produced, and which the House of Representatives, in the exercise of a legitimate power and duty, have found to be void; even although of such usurpation the Senate decline to believe, and refuse or neglect to enquire.

J. COLLAMER.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 283.

IN THE SENATE OF THE UNITED STATES.

AUGUST 11, 1856.—Ordered to be printed.

Mr. WILSON made the following

REPORT.

[To accompany Bill H. R. 353.]

The Committee on Private Land Claims, to which was referred House Bill 353, "for the relief of Talbot C. Dousman," adopt, as their own, the report from the House Committee on Private Land Claims, submitted by Mr. Thorington on the 23d May, 1856, and for the reasons therein set forth the committee are of the opinion that the claimant is entitled to the relief provided in said bill; they therefore report the same back, without amendment, and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *May* 23, 1856.

Mr. THORINGTON, from the Committee on Private Land Claims, made the following report:

The Committee on Private Land Claims, to whom was referred the petition of Lyndsay Ward, James Duane Doty, and T. C. Dousman, executors, &c., praying that an act may be passed requiring the Commissioner of the General Land Office to issue a patent for a certain parcel of land described in the said petition, to Talbot C. Dousman, as in other cases, according to section 5 *of the act of* 1823, *respectfully report:*

That they have examined the papers and proofs, and they find that on the 9th day of September, 1823, James Veaux presented to the commissioners appointed in the act of 1823 to hear and determine the claims of persons to tracts of land occupied and cultivated by them in the Green Bay settlement, on the 1st of July, 1812, his claim, and the testimony to support it, to a tract of land described as follows:

"Commencing at low-water mark on Fox river and running west eighty arpents, and bounded on the north by a certain tract occupied by the United States garrison, west by wild lands, south by a certain tract claimed by John Baptiste Longevine, sen., and east by Fox river, being five arpents in breadth."

That the said commissioners decided that the *claim be confirmed*, and that it was not in conflict with any confirmation before made, (vol. 4, Am. State Papers, Green's edition,) and that they gave their certificate to the correctness of the proceedings had before them.

That although by the act these proceedings confirmed and made perfect the title, vesting the same in the said Veaux, yet the said tract of land was embraced in a report made by the said commissioners to the Secretary of the Treasury, upon all the unsettled claims in Michigan.

That the Secretary of the Treasury, instead of executing or carrying into effect the law of 1823, and instead of selecting the doubtful and uncertain claims from those which were confirmed, decided to lay *all the claims* before Congress, and submit all the decisions of the commissioners to it for supervision, refusing to cause the claims actually confirmed by law to be surveyed, and patents to be issued to the claimants.

That on the 17th of April, 1828, Congress passed an act to confirm certain claims passed upon by the commissioners, excluding those in the county of Michilimackinac and also certain lands occupied by the United States for military purposes; that about the time of the passage of this act the President of the United States (upon erroneous representations) was induced to make a large military reservation of land in the vicinity of Fort Howard at Green Bay, amounting to five or six thousand acres. In this tract was included the land of James Veaux. The confirmatory act of 1828 was therefore of no benefit to him in procuring him the evidence of his title, as the Secretary, after its passage, refused the patent, because his land was thus embraced in the reservation.

That the title to the land continues in this condition, although the post, as a military station for troops, has been abandoned, and every part of the reservation has ceased to be occupied for military or government purposes; that the lands are not now required for such purposes, notice having been given during the last year by the Secretary of War *for their sale;* and that no compensation was ever made to the said Veaux for thus taking his land.

The action of the War Department seems to render it necessary, to relieve the claimants, to pray for an act of Congress in their behalf.

It further appears that the said Veaux, on the 19th day of July, 1824, by deed duly executed and recorded, sold the said tract of land to one Michael Dousman, and that the said Dousman having died in the year 1854, did, by his will, appoint Henry T. Backus, Lindsay Ward, and James D. Doty, his executors; that Talbot C. Dousman, one of the petitioners, is the son and one of the heirs of said Michael Dousman, and that he is the sole owner of the said interest and lands of James Veaux, as appears from duly certified copies of deeds duly executed and recorded.

Under these circumstances, your committee herewith report a bill requiring the Commissioner of the Land Office to cause said tract of land to be surveyed in the same manner as other private claims to lands at Green Bay, and that he be required to issue a patent to the

said Talbot C. Dousman, as in other cases, and according to the provisions of the act of 1823, and recommend its passage.

GENERAL LAND OFFICE, *March* 7, 1856.

SIR: In reply to your inquiry of the 6th instant, and in the case of Jacques Veaux, I have the honor to submit the following:

1st. That the claim presumed to be referred to is entered in book No. 1, being a report of the commissioners on Green Bay claims, as follows:

"*Claims at Green Bay.—Entry of a tract of land.*

"I, James Veaux, do hereby enter my claim to a certain tract of land situated in the county of Brown, and Territory of Michigan, bounded and butted as follows: Commencing at low water mark on Fox river and running west eighty arpents, and bounded on the north by a certain tract occupied by the United States garrison, west by wild lands, south by a certain tract of land claimed by John Baptiste Longevine, sen., and east by Fox river, being five arpents in breadth. Witness my hand, at Green Bay, this 9th day of September, A. D. 1823.

"JAMES VEAUX, his x mark."

(State Papers, vol. 4, p. 706, D. Green's edition.) See testimony on same page before the board; and on page 707 their decision is as follows:

"DETROIT, *October* 31, 1823.

"In the preceding case of James Veaux, the commissioners decide that the claim be *confirmed;* it is not to conflict with any confirmation heretofore made."

This office has decided that the confirmatory law which is properly applicable to the report embracing this claim, is the act of April 17, 1828, entitled "An act to confirm certain claims to lands in the Territory of Michigan." The second section of said act expressly designates and operates on said volume 1, but with certain limitations and restrictions as stipulated in the third section; one of which is, that the confirmation shall not be so construed as to extend to "any lands occupied by the United States for military purposes."

Now as this claim is for a tract which, it appears, would fall within the boundaries of the Fort Howard military reserve, according to the limits of that reserve, as delineated on a map in this office, bearing the Secretary of War's recommendation of the 1st of January, 1829, and the President's order for the reservation of the 2d of March following, it has been held and treated as excluded from confirmation. The original grounds of exclusion from confirmation are taken away by the abandonment of the Fort Howard reservation. The sale of that reservation, however, is made subject to the control of the Secretary of War by the act of March 3, 1819.—(See United States Statutes at Large, vol. 3, p. 520, chap. 88.)

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 284.

IN THE SENATE OF THE UNITED STATES.

AUGUST 12, 1856.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany Bill S. 449.]

The Committee on Foreign Relations to whom was referred the petition of Dr. James Morrow, late agriculturalist attached to the squadron under the command of Commodore Perry, during his expedition to Japan, have had the same under consideration and now report:

That, it appears from his memorial and accompanying papers that some time in February, 1853, Dr. James Morrow, of South Carolina, was detailed by the Navy Department for the performance of such duty as might be assigned him in reference to the care and distribution of seeds and the use of agricultural implements, under the command of Commodore Perry, during his late expedition to Japan and the Chinese seas. That while engaged in that service, which continued for about two years, he did distribute large numbers of seeds to the inhabitants of Japan, Lew Chew, and other places, teach the proper mode of cultivating them to the natives, distribute agricultural implements used by us, with instructions how to use them, &c., and also collected a large number and variety of seeds and plants, the growth and production of those countries, many of which were new to us and promise to form a valuable addition to our agricultural and horticultural interests, carefully preserved and sent them home for distribution. That he also collected many specimens illustrative of natural history, now deposited in the national gallery at the Patent Office and at the Smithsonian Institution. That in the performance of those duties he necessarily incurred heavy expenses in travelling inland, hiring the protection of guards, &c. That at one time for a period of nearly four months, during the expedition, owing to the indisposition of the surgeon, and the general prevalence of sickness in the squadron, he was required to perform the duties of assistant surgeon.

That for all these various services he received no other compensation than is allowed to a master's mate ($300 per annum) at which rank he was rated—among the lowest grade of officers known to the naval service—for want of power in the department to assign him any other, as stated by the Secretary of the Navy.

The value and importance of Dr. Morrow's services are fully recognized by the Department of State, both in regard to the agricultural and scientific interests of the country, and he, therefore, asks that a compensation adequate to those services may be allowed him.

That he is clearly entitled to it cannot be denied. The committee, therefore, report a bill in his favor and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 285.

IN THE SENATE OF THE UNITED STATES.

AUGUST 14, 1856.—Submitted and ordered to be printed.

Mr. DURKEE made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the memorial of Edward H. Carmick, report:

On pages 2 and 3 of House Ex. Doc. 47, 2d session 33d Congress, we find the following "article of contract:"

This article of contract, made the 15th day of February, in the year one thousand eight hundred and fifty-three, between the United States (acting in this behalf by their Postmaster General) and Albert C. Ramsey and Edward H. Carmick, William H. Aspinwall, and Edwin Bartlett, of the city of New York; Silas C. Herring, Elihu Townsend, Simeon Draper, and R. B. Coleman, of the same place, *witnesseth:* That whereas by an act of Congress, passed March 3, 1845, entitled "An act to provide for the transportation of the mail between the United States and foreign countries, and for other purposes," the Postmaster General is authorized to contract for the transportation of the United States mail between any of the ports of the United States and a port or ports of any foreign power, whenever, in his opinion, the public interests will thereby be promoted; and whereas, by another act of Congress, passed March 3, 1851, entitled "An act to establish certain post roads in the United States and the Territories thereof," the Postmaster General is authorized to enter into contracts, for a period of not longer than four years, for transporting through any foreign country the mails of the United States, and that, in making such contracts, the Postmaster General shall be bound to select the speediest, safest, and most economical route; and whereas notice has been given by advertising, in accordance with the directions of said act, for inviting proposals for mail contracts, under and by virtue of the act aforesaid; and whereas Albert C. Ramsey and Edward H. Carmick have been accepted, *according to law*, as contractors for transporting the mail on route No. 9, from Vera Cruz, via Acapulco, to San Francisco and back, twice a month, according to the schedule hereinafter mentioned, in thirteen days each way, being an extension of two of the trips on the New Orleans and Vera Cruz line through Mexico, for the purpose of conveying the mail, and thus making one through line in sixteen days between New Orleans and San Francisco, at and for the sum of four hundred and twenty-four thousand dollars per year, for and during the term commencing *from the time* Congress

shall ratify this contract, and ending four years from that date, with the right reserved to the Postmaster General to continue it one year longer at the same terms.

Not deeming it necessary to recite here the whole of said contract in terms, as exhibited in the Ex. Doc. 47, before referred to, the committee will state, in substance, that the security afforded by the contractors was commensurate to the magnitude and importance of their undertaking, exceeding, in actual responsibility, five millions of dollars. This massive security applied to the performance incident to such service, and was for the safety of the mails throughout the route.

It will be perceived that this improved service was restricted to sixteen days' transit between New Orleans and San Francisco, on failure thereof the contractors to forfeit the pay of the trip. The consideration of $424,000 per annum embraced a service to be performed by the contractors exceeding the great commercial termini of the route. It included, also, the intermediate service of delivering and receiving regularly the mails at the minor points of San Diego and Monterey. It will not escape observation that this large service, placing the great marts of New Orleans and San Francisco within sixteen days of each other, and embracing San Diego and Monterey intermediately, must have been regarded by the Postmaster General, who secured it for the country, as a most interesting administrative achievement.

Although the service was to begin, imperatively, when Congress should make the needful appropriation—the written obligation to take effect when that body should thus ratify—yet, as will be seen on page seven of the Ex. Doc., we find the Postmaster General giving his official orders to his postmasters at New Orleans, San Francisco, San Diego and Monterey, to deliver the mails to the contractors "on the Vera Cruz and Acapulco line" when said "communication is open," with corresponding official advices to Ramsey & Carmick, of the same date. This highest official testimony of his understanding of the service to be put into operation, accompanied by the concluding words of qualification—"the pay, if any, for said service, commencing only in accordance with the terms of the contract made February, 15, 1853"—shows that the department expected the contractors to equip and put into operation the route at once, or as soon as practicable.

Thus, the contractors were to have the mails for transportation so soon as they should be ready and should call for them, this preparatory and experimental service to be without pay in advance of the affirmance of Congress. All this was in March, nine months in advance of the regular meeting of Congress, and yet we have already the practical orders of the Postmaster General to his official subordinates, evincing this functionary's solicitude for the final success of a great measure, and his understanding also that the contractors were to begin the preparatory service as soon as the route could be made ready for it. Thus it was their admitted privilege to begin the service at once on the condition stated, while it was their obligation to perform it when Congress should affirm such obligation.

The committee have now considered the orders of the Postmaster

General, who made this contract, and their purport. They have now to state, that these orders were rescinded by the present Postmaster General. This first overt act of hostility seems to have been preceded and succeeded by uniform symptoms of aversion to this whole undertaking. The contractors, however, after applying much forethought and energy, and encouraged by the good will and kind offices of the Mexican government and people, equipped their route by land and sea, and called repeatedly for the mails, which were now denied to them.

Nor would the present Postmaster General agree to recommend this contract to the approval of Congress. Furthermore, his disparagement and denunciation of it are now to be seen in his official statements to Congress and to others. The application of his official power tended to leave the impression on Congress and on the public mind that the enterprize had failed, and that the contractors had abandoned it; instead of which, they had equipped their route, and had already demonstrated that they could compass, within fourteen days, (instead of the sixteen days required,) the great commercial cities of New Orleans and San Francisco! In brief words, the opposing force of the Post Office Department arrested and destroyed this whole enterprise.

Examination of the House document before referred to, and of the Postmaster General's report to Congress of December 1, 1853, fairly avouches the foregoing narrative of this subject. The credit of the contractors was quickly destroyed; their ruin was complete.

The committee do not here pause to argue the obligation of the Postmaster General to advise Congress *fully* on this subject; and officially to commit it to the *unbiassed* arbitrament of that body, as contemplated in the contract. The Postmaster General had solemnly, and after much consideration, made this contract. The private fortunes of individuals had become involved in it. They had devoted to the subject years of toil. The contract itself was to give effect to an act of Congress. It involved a large public policy. It was now a huge administration measure. *Who*, but the postal executive, was now to advise the legislature, officially and *fully*, in respect to it? The committee wholly misconceive the order of our government, and the subdivision of its cardinal functions, if the Postmaster General could evade this obligation.

On the pages of the documents before referred to, his peculiar views of this subject will attract attention. The committee do not conceive that they transgress any rule of official courtesy, when they declare that the views of that functionary subvert the very canons of organized government; and that, as referable to this contract, they are incongruous and irrelevant. This contract, he says, "did not meet *his* approbation." As his disapproval could not invalidate the contract, or evade its obligation, so *his* approval was not essential to its validity. He had but recently attained the station where he found this contract complete from the hands of his official predecessor, finished and executed, so far as the department was concerned; *not* IN *fieri*, to be finished by any successor. The pending duty of the Postmaster General was only to commit the subject *fairly and fully* to Congress, whose final judgment in the premises was the condition stipulated. The

present Postmaster General, in other words but to a like effect, announces that *he* "disapproves of the principle on which the contract was made." That, too, had been definitively adjudged by his official predecessor. Not an executive successor, but Congress, was now to affirm or disaffirm that principle. The legislature, not a new executive officer, was now to determine whether it was wrong to consult their judgment in such a matter. His kindred objection, that the route was "impracticable for mail purposes," was already anticipated by the contrary impressions of his executive predecessor. Congress had now become the stipulated referee. Surely that body could be trusted to determine finally whether the route was or was not practicable for mail purposes, with the lights afforded by the experimental trial of it by the contractors. Without the continued countenance of the Post Office Department, and even under pressure of its opposing efforts, the contractors had carried through intelligence between San Francisco and New Orleans within fourteen days, instead of the sixteen days stipulated. Such facts, as to what the contractors had already done on the route, were due to Congress, not the unsupported individual opinion of Mr. Campbell. Even such opinions of his might have been deprived of their prejudicial influence, had he, at the same time, informed Congress, as the files of his department enabled him to inform that body, that the contractors on this route had already placed the commercial cities of San Francisco and New Orleans within fourteen days postal intelligence of each other.

This information, thus due to Congress in December, 1853, and which it was surely the duty of the Postmaster General to communicate to them at that time, they have never yet learned, except informally from the contractors long afterwards. The printed documents further show, that the Postmaster General knew, in December, 1853, and as early indeed as June of that year, that these contractors, and others associated with them, had expended large sums of money in the preparation of this route. Why did this branch of the subject also escape his attention, when, in December, 1853, he was reporting to Congress?

The committee are of the opinion, that the act of March 3, 1851, rests on a basis of enlightened public policy; that the contract under consideration, resulting from that legislation, and conditioned on the sanction of Congress, ought to have been communicated to that body, not as it was presented to them, but with *all* the material and incident information that now appears to have been in possession of the Post Office Department; that the failure so to do, added to the previous opposition of the department, overwhelmed the contractors with pecuniary disasters, and that they now have a pair and equitable demand for damages against the government.

Would these men ever have incurred such vast and various responsibilities could they have foreseen that they were to have the hostility, and even the reproaches, instead of the friendly co-operation, of the very department with which they had contracted? Good faith in that department would probably have crowned them and their mail route with triumphant success. Bad faith was surely the source of their disasters.

The facts of this case are few indeed, and plain as authentic documents can make them. Aside from the irrelevant matters introduced by the Post Office Department, they do not admit of misconstruction. Nor do the committee conceive the principles to be applied at all doubtful. There has been obvious wrong done to the party asking relief. Congress cannot evade the obligation to accord some measure of redress.

This obligation is enhanced, too, by the consideration that the claimants incurred overwhelming damage in a fair, arduous and triumphant effort to perform a contract, which illustrate, as it was intended to illustrate, the enlarged public policy of the act of Congress of March 3, 1851—the policy of increase and speedier intercourse with our Pacific possessions.

Their contract once made, they deserved to be considered the instruments of the government, to give all possible effect to that policy. They were evidently so regarded by the Postmaster General who engaged them in this most important service.

It is not the province of this committee to censure the present administration of the postal department, that it viewed this service in a different light and with an unfriendly eye. It is not the province of this paper to censure even the fact that the department, in 1853, set at nought the act of 1851 and its policy, by striking down the very instrumentalities already selected to give it effect, and which were on the eve of that success which was to assure the appropriation by Congress, as contemplated in the contract.

The risks were enormous which were imposed on and incurred by the contractors. They were inseparable from the preparatory equipment of their route, prior to an appropriation by Congress. Their readiness to incur such hazard evinced their unreserved confidence in their own enterprising ability, and equal confidence in the department to second their efforts, at least, while not itself sharing the hazard. The contractors were entitled to every good faith and every kind act of the department seconding their efforts, short of an expenditure of the public money.

In that enterprise of the contractors, which conceived, and planned, and obtained their overland Mexican transit; in the further daring enterprise of this vast service in advance of an appropriation, and, in staking their all upon the demonstration of their route for the judgment of Congress—in all this the committee can conceive no possible reason for the apparent aversion of the department, but every natural reason to command its sympathy and co-operation.

It is no answer to say that they incurred such hazard in expectation of final profit to themselves. That, itself, would be a fair motive, ever commendable, without which the greatest achievements in human progress might be wanting to history. In such enterprises every honest man expects to promote his own interest, in some form or other. And, in this instance, the greatest possible pecuniary success of the contractors would have attested the equivalent promotion of the public policy of the act of 1851. The sequel shows that their ruin was not the only fruit of department hostility. Another result occurred far more interesting to the public at large: the frustration of the act of 1851, with its most important policy.

Hence, the committee regard the damage done to the contractors as a most unnecessary mischief.

The hand that worked it was wielded in the name and under the auspices of the government.

The government, then, is responsible, and ought to pay for it.

The further objection of the Postmaster General—that the sum of $731,000 was then already being expended for mail transport between the Atlantic and the Pacific, and that it was "inexpedient and unjust to go into the expenditure of a still further sum of $424,000 for the service in question"—was already adjudged by his official predecessor, and contracted on to the large involvement of individual interests. It was an intrusive lecture to Congress, who were entitled to his *full facts*, instead of his admonition. It was not merely an ex parte accusation against the official judgment and conscience of his predecessor. It was an arraignment, also, of the legislative body that had enacted the law of March 3, 1851, which the contract itself was designed and adapted to carry into effect. Had he extended his researches into the consideration of that law, in connexion with the lost Pacific and Panama contract, he might have discovered his own plain *executive obligation* to send his mails by this very condemned route, as the most economical, and (measuring distance by time) the shortest and most expeditious. It was then the *mandate* of that law, that he should adopt that route, as connecting San Francisco with our southern metropolis, within sixteen or fourteen days. Then, instead of adding the $424,000 to the $731,000, he might gradually have substituted the smaller for the larger cost, and saved ten days' time in postal intelligence!

The subjoined may be stated as a fair summary of the Postmaster General's singular proceedings in the premises:

In July, 1853, (page 8 of document,) he disavows the obligation of this contract—disapproves of the principle on which it was made—denounces the route as impracticable for mail purposes, and as unjust and extravagant.

On the 3d November, 1853, (see page 13 of document,) he could not dispense with the semi-monthly mail that Ramsay & Carmick, as he said were to furnish, as contemplated by Mr. Hubbard—thus "recognizing" the obligation of the contractors, and of course the obligation of the contract itself.

On the 1st December, 1853, (see page 27 of another House document, Annual Report to 32d Congress,) he again repudiates contractors and contract—again denounces the route—declines to give Congress the proof in his department of its facility and unequalled dispatch—takes leave of the subject by advising that body that, since the 15th June preceding, he had not heard from the parties, (the proofs various and cumulative to be now seen in Doc. 47 to the contrary notwithstanding,) thus fixing the impression on the legislative mind, that the route and the contract were alike impracticable, and that the contractors had abandoned the enterprize!

Thus were these contractors intercepted by the Postmaster General and excluded from congressional hearing of the question of their appropriation. It quickly demolished all their vast and expensive ar-

rangements. It destroyed their credit at home and in Mexico. It left vast amounts of property useless on their hands in a foreign country. They were now prostrate in ruin, wrought by the hand of the very department of government that had solemnly contracted with them!

The papers in this case show that these parties actually expended nearly $113,000 in this business. This is not here stated as a proper measure of damages. It does not embrace the embarrassments and losses imposed on one of the associated companies in this enterprise, (see page 10 of the document 47;) nor does it include the various and multiplied expenses, precedent, subsequent, and contingent, to which these claimants were and are subjected, and which, though now impossible for them to detail, may probably amount to nearly half as much more. Nor does it include the irreparable damage of five years of toil and anxiety, now rendered far worse than fruitless to the contractors. No fair judge or legislator, in an age of activity and progress, and in respect to the accumulations of incidental expenses scattered over a long line of heavy business operations, stretching far even into a foreign land, can say that such itemized amount of $113,000 is the proper measure of damages here. It is referred to, only because it was an exact account of expenditures, by an agent in Mexico, who is enabled to verify it by items.

Numerous and various are the precedents, legislative and judicial, entitling these men to an ampler allowance, on bases more equitable and determinate. Not descending to the tedium of compiling authorities, we may cite a recent and memorable decision, rendered under both legislative and executive auspices.—(See the printed report of the Comptroller of the Treasury, in the matter of the Ohio and Mississippi river mail contract.) That elaborate adjudication, embodying and sustained by judicial and legislative precedents, announces the bases, as approached now by the committee, as a measure of redress. They do not now suggest a full, definitive estimate, only because they wish to present such a measure of justice as will not be questioned. Relief to the parties, who have been made the victims of confidence in the justice and faith of an executive department, has already been too long delayed. As the full measure of losses incurred, or profits prevented, is indeterminate, under the anomalous circumstances to which the parties were subjected, the committee propose an adjustment by the Comptroller of the Treasury. While in the pursuit of justice, or travelling on the road thereto, they do not think that it becomes the occasion to interpose an objection merely technical, to wit, that this contract, though complete as to the postal department, was incomplete and conditional as to Congress. Such technical objection they now discard as derogatory to the character of the government itself, and at war with the ends of justice now sought to be attained. The total breach of faith by the administrative department itself, unprovoked by any apparent public necessity, and to the frustration, as the committee think, of a valuable public policy, worked the damage to these parties, while they were doing all that was incumbent on them to do, and precluded that consideration of Congress for which they had contracted, and to which they were entitled.

POST OFFICE DEPARTMENT,
Washington, August 12, 1856.

SIR: I am in receipt of your letter of the 8th instant, requesting to be furnished "with all the information, if any, now in possession of the department, not already communicated" to Congress, on the subject of the conditional contract entered into between the late Postmaster General, Mr. Hubbard, and "the Mexican Ocean Mail and Inland Company," for the conveyance of the mail between San Francisco and Vera Cruz, *via* Acapulco.

My letter of January 31, 1855, to the Speaker of the House of Representatives, and accompanying papers, (see House Doc., No. 47, 33d Congress, 2d session,) contain the principal facts known to me in this case. The action of the department, with reference to this subject, shows clearly throughout that it has had one point steadily in view, namely, to avoid every possible step whereby the government might become responsible for any expense in the matter, before Congress should decide upon the question whether vitality should be given to the contract "by the passage of an appropriation to carry it into effect."

The records of the department show that, in the first instance, the late Postmaster General, Mr. Hubbard, refused even to advertise for proposals for this line, and confined his advertisement (of September 30, 1852) simply to the route established by special act of Congress, from New Orleans, *via* Tampico, to Vera Cruz. Subsequently, on the 18th of October, 1852, he was induced to withdraw that advertisement and substitute another, in which proposals were invited for the extension of the New Orleans and Vera Cruz line to San Francisco. There is no law *directing* the Postmaster General to make a contract for service between Vera Cruz and San Francisco; and it was well understood, as expressed in the conditional contract for this line, that the whole matter was to be left for the decision of Congress.

The contract being executed in this manner, on the application of the contractors, the Postmaster General, Mr. Hubbard, consented on the day before he left office, under date of March 7, 1853, to authorize (not instruct) the postmasters of New Orleans, San Francisco, Monterey, and San Diego, "to make up and send mail by the Vera Cruz and Acapulco line, when said communication is open, and the contractors are prepared to carry a mail on the terms of their contract of February 15, 1853." In writing to the contractors, he took the precaution to say that he had given this authority to the postmasters, "with the express understanding that neither this department nor the government is to be in any way holden for any expenses attending such service; but, as provided in the contract, it is left to Congress to determine whether the contract is to be sanctioned by an appropriation to carry it into effect, the pay, if any, for said service commencing only in accordance with the terms of the contract," namely, "from the time Congress should ratify the contract."

As a further evidence that Mr. Hubbard did not intend that the department should be placed in a position involving any pecuniary responsibility in the matter, it may be observed that on the 8th of

March, 1853, the day his resignation of the office of Postmaster General took effect, in answer to a request from Wm. H. Aspinwall, esq., to be apprised when he wished the service begun, he communicated to him a copy of the letter to Messrs. Ramsey & Carmick, above referred to, "as showing all the action the department was then disposed to take in the matter."

A few days after coming into office, on the 11th of March, 1853, in obedience to a resolution of that body, I communicated a copy of this conditional contract to the Senate; but my attention was not particularly called to the terms of the agreement until the receipt of Mr. Rankin's letter of 15th June following. So soon thereafter as I could give the subject my attention, I came to the conclusion that I could not approve of the arrangement; and, in my letter of 9th July, in reply, I took occasion frankly so to express myself. Entertaining these views, I deemed it but just to the contractors that they should be thus early advised of them, in order that they might not be disappointed in any hope or expectation they might have had that they would receive the aid of the department in favor of their project before Congress. In my first annual report, referring to the fact that I had already communicated a copy of the contract to the Senate, and stating its terms, I gave my reasons why the contract did not meet my approbation; but it is needless to say that in all this there was nothing to prevent Congress, had it been so disposed, from ratifying the contract "by the passage of an appropriation to carry it into effect." The same may be said with reference to my order of 23d November, 1853, requiring the postmasters, before delivering any mail to the proprietors of the Acapulco line, should it be applied for, first to "report to the department for further instructions." And so, also, in regard to my letter of 3d November, 1853, to the contractors on the New Orleans and Vera Cruz route. There was nothing in any of these acts which the department had not the perfect right to do; and my reasons for them are stated in my letter of 31st January, 1855, to the House of Representatives. The department was under no obligation to aid the proprietors in any efforts they might find necessary to secure the ratification of their contract by Congress. This was a matter entirely of their own; and all the department had to do was to see that the contract was fulfilled *should Congress declare it to be a contract.*

The memorial of Messrs. Ramsey & Carmick, accompanying your letter, is herewith returned.

I am, very respectfully, your obedient servant,

JAMES CAMPBELL.

Hon. CHARLES DURKEE,
Committee on Post Office and Post Roads,
United States Senate.

A memorial to be presented to the 34th Congress of the United States, on the contract made with Messrs. Ramsey & Carmick, for the transportation of the mails between New Orleans and San Francisco, via Vera Cruz and Acapulco, in Mexico.

The undersigned would respectfully call attention to the manner in which the United States mail service has been performed between the Atlantic States and the Pacific. In the year 1847, while California was as yet a province of Mexico, and before the treaty for its annexation, contracts were entered into for the transportation of the mails by the way of the Isthmus of Panama. In order to encourage the carrying out of this important enterprise, the United States advanced a half of million of dollars to the contractors, for the building of the proper kind of steamers adapted to the undertaking. Under this contract the mails have been subsequently carried between California and the Atlantic States once every month, and by another arrangement, the service has been increased to twice per month, at the annual cost to government of $731,868. This service was at first performed on each trip in about twenty-eight days. Afterwards the time was reduced, and it is now done in from twenty-two to twenty-three days from port to port.

In order to shorten the time as well as distance to and from California, and also to encourage competition, Congress, on the 3d of March, 1851, passed the following act:

"That the Postmaster General be and is hereby *authorized* to enter into contracts or make suitable arrangements for transporting through any foreign country the mails of the United States, running from and to any point in the said United States. *Provided*, That such contracts as shall be made under the authority conferred by this section, shall not be for a longer period than four years, and that in making them the Postmaster General shall be bound to select the speediest, safest, and most economical route. *Provided further*, That such contract shall be subject to be revoked and annulled whenever any new road or canal shall be cut or opened affording a speedier, more economical, and equally as safe means of communication between the point of departure and the point of destination of the mail to be transported; and that, in such case, a fair indemnity be awarded to the parties concerned: *And provided further*, That before making such contracts, notice shall be given during sixty days, by advertisements in the usual manner, for inviting proposals for mail contracts."

It being thus made the imperative duty of the department to select the speediest, safest, and most economical route, it naturally led to extended inquiry on the subject. Various private individuals also devoted their time and money to the same object, in order to avail themselves of the reward thus held out by the government for the discovery of the best route across the American continent for the transportation of the United States mails.

After much time and attention had been given to this inquiry; after the most careful surveys had been made; after extended explorations had been undertaken, and after large sums of money had been ex-

pended by private enterprise, another difficulty of great magnitude had to be overcome—which was, to obtain the permission of a foreign government for the United States mails to pass through its territory without being subject to the local post office laws, rules, and regulations, in the transit from ocean to ocean. These various obstacles were formidable, and required enterprise, energy, and skill, and the expenditure of large sums of money before the route which the parties had in view could be reported practicable and adapted for the mail service. When all these difficulties were surmounted, and every possible objection removed, a plan was proposed and submitted to the Postmaster General, Mr. Hall, in the following year of 1852, for his sanction and adoption. Having given the subject his mature deliberation, he finally approved of the same. The department decided that the route proposed through Mexico, by land for a distance of 384 miles, between the cities of Vera Cruz on the Atlantic, and Acapulco on the Pacific ocean, and from thence by sea to California, presented the greatest advantages and more fully than any other came up to the requirements of the act of Congress. This land route passed through the cities of Cordova, Orizava, Puebla, Cholula, Atlixco, Matamoros, Chietla, Chilapa, and Tixtla. Consequently, in the same year of 1852, the Postmaster General, Mr. Hubbard, issued an advertisement, in due form of law, for proposals to carry the United States mails over this route, from Vera Cruz to Acapulco, and, in pursuance of another act, from thence to San Francisco and back, connecting at Vera Cruz with the United States steamer mail line to New Orleans, and thus making a continuous mail service from the Mississippi river to California.

Mr. Hubbard sought for every information that could be had. The project was examined by President Fillmore, by the officers of his cabinet, by the Post Office Committees of the Senate and House of Representatives, and by the members of Congress from California and Louisiana, and others who were deeply interested in the question. The Postmaster General also had the benefit of the information of the Mexcan minister, Señor Larianzar, and of the Prussian minister, Baron Gerolt, who had spent many years in a diplomatic capacity in Mexico, and who, from his extensive topographical knowledge of that country, was intimately acquainted with the route. From all these sources he received favorable opinions of the feasibility of the enterprise, and, in addition, an experimental trip was made, at a heavy cost, which clearly demonstrated the truth of all that had been advanced in its favor. A large number of senators and members of the House of Representatives joined in a recommendation to the Postmaster General to close the contract. Several months were thus taken in obtaining all the facts requisite, and a further delay was created by the caution in the department to require gentlemen of undoubted wealth and responsibility as sureties to a contract of such magnitude. It was not until the last day of the session of Congress, the 3d of March, 1853, that the contract was finally signed and sealed, when it was too late to submit it to both Houses for the requisite appropriation to carry it into effect. At an extra session of the Senate, on the 11th of the same month, a copy of the contract was transmittted to that body by the Postmaster General, Mr. Campbell.

By this instrument, the contracting parties were bound to convey the United States mails between Vera Cruz, Acapulco, San Diego, Monterey, and San Francisco, in thirteen days, semi-monthly each way, for an annual compensation of $424,000; and by connecting at Vera Cruz with the United States mail steamer line, the mails would be thus conveyed between San Francisco and New Orleans in sixteen days. The time stipulated in the schedule of arrivals and departures, gave five days for the transportation of the mails between the cities of Vera Cruz on the Gulf of Mexico, and Acapulco on the Pacific ocean, a distance of 384 miles by land.

It was further stipulated that the contract was "to have no force or validity until it shall have received the sanction of the Congress of the United States by the passage of an appropriation to carry it into effect." This understanding was predicated upon the anomalous position of this particular case, as there was no appropriation for the service, and yet the department was directed to contract for its performance. Therefore it was agreed that it should go into operation when an appropriation was made.

By its terms, the contractors were then to be prepared to perform the service, and in default of doing so, they and their sureties would have been liable in damages for non-performance of its stipulations. They, therefore, assumed the responsibility of arranging a line of land and ocean mail service of 2,231 miles in length, at the instance of Mr. Hubbard, without any advancement of funds from government, and without even an appropriation for the service. But in doing this the department was equally bound in good faith to submit the contract to Congress, at the next session, for its action. This was as much the duty of the Postmaster General as was the performance of the service by the contractors upon the appropriation being made. With this understanding among all parties, the contractors proceeded to arrange for the service, with the sanction of the department; and the Postmaster General, Mr. Hubbard, on the 7th of March, issued an order to the Postmasters at New Orleans and San Francisco, &c., to send a mail by the Vera Cruz and Acapulco line when "the contractors are prepared to carry a mail on the terms of their contract." On the same day, he apprised the contractors of this order, and also "the pay, if any, for said service commencing only in accordance with the terms of the contract." Soon after, Mr. Campbell, the present Postmaster General, was appointed to that office.

On the 15th of June following, the department was informed by Mr. Rankin of the preparations made and making for this service, as follows:

OFFICE OF THE MEXICAN OCEAN MAIL
AND INLAND COMPANY,
New York, June 15, 1853.

MY DEAR SIR: The position that our company sustains to the government (as the real parties by contract) to execute the mail contracts with Messrs. Ramsey & Carmick, renders it proper that the Post Office Department should be advised of the state of forwardness on the part of the contractors to fulfill the contracts.

Our vice-president, Colonel Albert C. Ramsey, is now in Mexico assigning the stations. In all this month and next month, the coaches, wagons, and literas will be in Mexico, portions of them being on their way now. By August 10, the mules and horses (1,000) will be down from Coahuila, and we then expect to make the regular transit across.

Although the contracts only require a bi-monthly mail, we are making all our arrangements for a *daily line* of transit across Mexico, feeling justified by the assurances we have from Mexico. We shall also establish a weekly line of steamers from New Orleans to Vera Cruz, (one steamer is now running there, and another now building;) and with the use of the new *envelopes* (when they appear) we shall actually afford a weekly line from New Orleans to San Francisco; and if the steamers on the Pacific could be arranged, we could make a daily line to San Francisco in sixteen days. Our land route will be daily, in any case, on account of our Mexican facilities.

We have purchased and ordered the whole of the rolling stock for the transit, and parties are now in Mexico clearing obstructions, and we shall not, I think, require the full time allowed by the contract for the transit, although trial only will verify our expectations.

We already have a margin in our favor in the gulf service, as our steamer, the "Texas," has performed the duty in sixty hours; and the Pacific service has been done in twenty-four and thirty hours less than schedule time. Our recent reports from Mexico justify us in the expectation of carrying the mails in fourteen days from New Orleans to San Francisco, and six months of experimental operation will, I think, show the feasibility of doing the regular service in within fifteen days.

In conclusion, I would add that we are exerting every energy in pushing the thing up, and shall spare neither time nor money in proving the truthfulness of all our positions.

An estafette mail will be carried from Vera Cruz and New Orleans to San Francisco next month, until the service becomes regular.

I am, with great respect, your obedient servant,

ROB'T G. RANKIN, *President.*

We have the *highest* assurance of *our* favorable position in Mexico.

Hon. JAMES CAMPBELL,
Postmaster General, U. S., &c.

To this letter the Postmaster General, on the 9th of July, replied to Mr. Rankin, as follows:

POST OFFICE DEPARTMENT, *July* 9, 1853.

SIR: Your letter of the 15th ultimo came duly to hand. My attention having been specially called to the circumstances connected with the contemplated line to the Pacific via Vera Cruz and Acapulco, I feel it my duty after due deliberation, to inform you that the conditional contract entered into between my predecessor, Mr. Hubbard, and Messrs. Ramsey & Carmick, for the conveyance of the mails over this line to San Francisco, does not meet with my approbation.

In the first place, as at present advised, I consider the route impracticable for mail purposes.

In the second place, the sums of money yearly drawn from the treasury for contracts which have for several years been, and are still in force, for the transportation of the mails between the Atlantic and the Pacific, are very considerable, amounting to about $731,868. In view of this fact, and of the many sections and neighborhoods, in the different States, which are either greatly restricted in, or deprived altogether of mail facilities, it appears to me both inexpedient and unjust to go into the expenditure of a still further sum of $424,000 for the service in question.

Moreover, I disapprove of the principle upon which this contract is made. In my opinion, if the Postmaster General has the right to make such a contract at all, it ought to be made without the restriction or limitation contained in yours, by which its force or validity is made to depend upon the passage of an appropriation by Congress to carry it into effect. I am unwilling to recognize any contingency of this kind, because, although the contractors may, under such conditional arrangement, establish no legal claim for compensation, they may, nevertheless, go on and incur expenses, in the expectation that they will be paid, and Congress, more from private sympathy than from public policy or right, be at length induced to yield to a measure to which its prior sanction never could have been obtained.

I am, respectfully, your obedient servant,

JAMES CAMPBELL,
Postmaster General.

ROBERT G. RANKIN, Esq.,
Pres't of the Mexican Ocean Mail and Inland Co., N. Y.

From this letter it will be perceived that the Postmaster General did not approve of the contract, for the reasons therein stated. If the route was impracticable, there was ample time before the meeting of Congress to test the fact. But it is somewhat remarkable that no document or writing of any kind has ever been produced, although all the correspondence was called for, to show upon what information this opinion was predicated of the route being impracticable. It was due at least to the contractors, to let them know what obstacles they had to encounter, and also if he had doubts only, to afford them an opportunity to remove his impressions. The objection "in the second place," of the large expenditure of money for the mail service between the Atlantic and Pacific could not be properly addressed to the contractors, as that was a question which could not be entertained in a discussion about a contract made in pursuance of law; and as Congress had directed this contract to be made, and being made, it was as much the duty of the department as of the contractors to carry out its stipulations. Another reason, "moreover," of the same character, was assigned, that he disapproved of conditional contracts, as he was "unwilling to recognize any contingency of this kind."

It was certainly not the duty of the contractors to controvert this point or any other which he might think proper to lay down for a rule of action by the department in contracts made by his predecessors: but as conditional contracts have been made by every Postmaster

General, and as they continue to be made by Mr. Campbell, this "principle" may rest for the present. On the whole, the contractors were at a loss to determine from the tenor of this letter whether the Postmaster General was finding fault with them for proposing "a route impracticable for mail purposes," or with his predecessor for entering into the contract, or with Congress for passing the acts upon which it was founded.

It was impossible also to know by what process of reasoning these objections were strung together so as to be embodied as an answer to the letter of the 15th of June. It is difficult to perceive how $424,000 were to be paid after performance of the service in transporting mails in 13 days over an "impracticable" route: it is equally difficult to comprehend the force of the objection to a contract, founded on the law authorizing it being an unwise and extravagant enactment; and above all, why a reproach in advance should have been cast upon Congress, that might in its wisdom refuse an appropriation for the contract, yet in its sympathy or folly would not suffer the contractors to be ruined.

Not perceiving the bearing of these objections, as they did not affect the stipulations of the written agreement, the contractors had still, in accordance with the original understanding, to proceed in collecting materials and preparing the line for the performance of the service. Although the Postmaster General was apprised of these operations, and although well aware of the contract itself on the 11th of March previous, when it was under his official notice, no intimation was given to cease in the labor and expense. It seemed that the letter from the department was not intended for any other purpose than to place the responsibility of the contract upon Mr. Hubbard, while Mr. Campbell would not by any act of his countenance or authorize its suspension. He was cautious to the extreme in not interposing the authority of the department to check the preparations then progressing. One word to that effect would have postponed all purchases and labors until after a decision by Congress. But this he neither intended nor desired, as will appear hereafter.

In the month of August, the materials for the line being collected and placed along the route between the cities of Vera Cruz and Acapulco, mails, consisting of letters and papers, were carried at intervals of every two weeks from ocean to ocean. At first the time taken to accomplish this distance was three days and twelve hours, but soon was reduced to three days; a further improvement was then made to two days and a half, and before the month of December the time taken for a trip was 54 hours. There is no doubt, from careful experiments made, that mails of any bulk can be carried between Vera Cruz and Acapulco in 48 hours.

The route being thus demonstrated to be practicable, on the 23d of September, an order was issued by the department to the postmasters at New Orleans and San Francisco, as follows:

POST OFFICE DEPARTMENT, *September* 23, 1855.

"SIR: Should the proprietors of the Vera Cruz, Acapulco and San Francisco line apply for mail to take over the route under the condi-

tional order of the late Postmaster General, dated 7th March, 1853, before delivering such mail to them you will report to the department for further instructions.

Very respectfully, your obedient servant,

JAMES CAMPBELL,
Postmaster General."

From this it is apparent that the department no longer deemed the route "impracticable," but in order to prevent the contractors availing themselves of their enterprise, and rendering the route popular by carrying the mails in the time stipulated, so as to secure an appropriation by Congress, the former order of Mr. Hubbard was revoked. The reason assigned by the Postmaster General for this proceeding is given in his letter to the Speaker of the House of Representatives, as follows:

"My object in issuing those instructions was simply to enable the department to be fully sastisfied, that all mails forwarded by that route were committed to the care and custody of competent and proper persons, and would be safely transported through Mexico. It does not appear, however, that any application has ever been made by Messrs. Ramsey and Carmick for a mail to be conveyed by that route, as no report from any postmaster to that effect has been received at this department."

It seems the "impracticable" objection was removed, and now new questions arose. These could only be answered by delivering the mails when called for and transported. It was by inspection of the route while in operation. But the Postmaster General thought this examination ought to precede the delivery of the mails. How could it be known that the mails "were committed to the care and custody of competent and proper persons, and would be safely transported through Mexico," while an order existed not to deliver the mails when called for? The contract itself provided, and the contractors and sureties in the same were responsible, that the mails *would be* committed to the care of proper persons, as follows: "They also undertake, covenant and agree with the United States, and do bind themselves jointly and severally as aforesaid, to be answerable for the person to whom the said contractors shall commit the care and transportation of the mail, accountable to the United States for any damages which may be sustained by the United States through his unfaithfulness or want of care;" and in another place, they are liable to be fined for "suffering it to be wet, injured, lost or destroyed, for carrying it in a place or manner that exposes it to depredation, loss, or injury," &c. Such an examination never could be made as is here stated to be the object of the order, and the best evidence of the fact is, that no attempt ever was made to institute such examination, for no trace of such appears under the call for all the correspondence as published. The assertion may here be made that no examination of this character was ever attempted, from and including the time of Benjamin Franklin down to Mr. Campbell, or since his coming into the department; and surely among such a variety of talent and capacity which this period would embrace, many strange projects might have been proposed.

But adds the Postmaster General, "it does not appear, however, that application has ever been made by Messrs. Ramsey & Carmick for a mail to be conveyed by that route, as no report from any postmaster to that effect has been received at this department." This was certainly an important piece of information for Congress. In other words, they did not call for the mails, as the postmasters were forbade delivering them. Therefore it might be supposed they would not call for the mails when they could meet only with a refusal. Before the mails could be delivered to them, it was requisite that this order should be revoked or modified, for it was the department (not the postmaster) that was to be satisfied that the mails were committed to the care and custody of competent and proper persons;" the postmasters not being even instructed to report more than the fact that the mails were called for. It is true the information might have been sought from the contractors; but they were not addressed on the subject, nor were they notified by the department of the existence of this order so important to their interests, and which in common justice ought to have been furnished. The existence of the order, however, became known to them, and the mails were not called for, and "no report from any postmaster" was required to that effect. But the Postmaster General might have reported to Congress that *he* was called on by Mr. Carmick, in his letter of November 12, 1853, in these words:

"I must respectfully ask that you will give an order permitting me, as one of the contractors, to carry a mail over this route from California, leaving it optional with persons to send by this way, and to designate the same on the letter; and in giving such an order, I wish you particularly to state that the department will in *no way be bound for any future remuneration for the service.*"

It seems, then, that on September 23, the Postmaster General recognized the contract, and only wished to be further assured that the mails would, in the custody of proper persons, be transported safely.

All the materials requisite for the establishment of a mail line across Mexico, from Vera Cruz to Acapulco, were prepared and upon the ground in the month of August, 1853. The service was regularly performed twice every month, so as to connect with the mail steamer at Vera Cruz running on the line to New Orleans. Although the mail service across Mexico was performed in much less than five days, the time fixed by the schedule, still the connexion was not made regularly with the steamer at Acapulco. This was from causes not within the control of the contractors, but from causes which the department might have obviated. Had the proper attention been given to the communications addressed to the department on this subject, and a proper remedy applied, the public would have been much benefitted, especially in California and the Atlantic cities, and moreover without any expense to the government. Application was made to the department to change the schedule of times for arrivals and departures on the New Orleans and Vera Cruz line, so that the connexion could be made without delay with the steamers at Acapulco and Vera Cruz, coming and going to San Francisco and New Orleans. When the schedule was established, steamers touched at Acapulco

every week, to and from San Francisco, making a weekly line. Twice every month these steamers carried mails, and twice every month the alternate steamers were not mail boats. To meet these latter vessels, the New Orleans and Vera Cruz schedule was arranged. But now these alternate steamers without mails were withdrawn, and the mail steamers touched at Acapulco in the very weeks when no connexion could be made with the Vera Cruz and New Orleans line. To render the connexion complete, on the 26th of October, 1853, the following communication was addressed to the department:

WASHINGTON, *October* 26, 1853.

DEAR SIR: The Mexican Ocean Mail and Inland Company, and Charles Morgan, of New York (through the agency of the undersigned,) present the following facts, and ask such decision as an impartial consideration of this memorial may produce. The company (having obtained from the government of Mexico peculiar and well authenticated privileges, whereby they were enabled to present to the United States Post Office Department a schedule of mail service which should insure the transmission of mails between New Orleans and San Francisco in the short space of sixteen days) urged the department for a mail contract authorizing the service, which was granted, subject to an appropriation by Congress for payment. Thereupon the company commenced proceedings for putting the route into active operation. Proper agents were dispatched to Mexico, and have been actively engaged in overcoming such obstacles as, unremoved, would have impeded rapid transit across that country. Roads were improved, others made; coaches, harness, mules, and horses have been purchased, and a large portion of them are already on the route, ready to commence the carrying of the mails. In connexion with, and forming a portion of this through-route, a mail service from New Orleans to Vera Cruz has been put into operation, the schedule for which was so arranged as to meet at Acapulco with the mail steamers on the Pacific, insuring a proper connexion on that end of the line. Thus nothing stood in the way of the successful operation of the route, save the obstacles on the land, which, being overcome, would enable us at once to perform our contract in the specified time; but now that arrangements are completed for this portion of the service, your memorialists find that an alteration in the running on the Pacific has thrown out of gear this well-arranged system. By the present schedule between New Orleans and Vera Cruz, it is impossible to meet the Pacific steamers, as they now run, at Acapulco, without suffering long delays at the latter point, entirely ruining the efficacy of this otherwise desirable medium of transit. The undersigned, C. Morgan, now urges that a knowledge of the existence of a through-service to San Francisco was the inducement for his accepting the portion of service between New Orleans and Vera Cruz; as, upon the successful working of the through-route, he depended for any profits that might inure to his ships from his connexion therewith. He has already put upon the route a first-class steamship of over 1,100 tons burthen, and is building another of about 1,500 tons burden for the same purpose; which two vessels will embrace an investment of nearly $300,000 for this first portion of the en-

terprise. The company depend upon appropriations by Congress for the means of remuneration; and as such appropriations can only be secured by proofs of the practicability of the through-route, as per schedule, they, together, ask your consideration of the efforts they have made, and the moneys they have expended, under inducements the Post Office Department held out to them, for such efforts and expenditures, *by granting a through-service and arranging schedule for connexion;* and respectfully petition that you will so alter the schedule between New Orleans and Vera Cruz for the two trips per month, now being performed, as will give them an opportunity of proving to Congress that this is by far the most expeditious route yet opened to the rich commerce of California; which proofs, they feel, must necessarily insure the appropriations that shall furnish the means to enable them eventually to carry the mails between the two great points in the short space of thirteen days! Believing that your sense of justice, and desire for advancing the mails in accordance with the progressive ideas of this essentially progressive age, will adduce an assent to their prayer, they have the honor herewith to submit such *temporary* schedule, for the said two trips per month, as shall furnish the desired proofs; and, with sentiments of regard and esteem, subscribe, respectfully, yours,

The MEXICAN OCEAN MAIL AND INLAND CO.,
and CHARLES MORGAN,
per HARRIS & MORGAN, *of New Orleans.*

Hon. JAMES CAMPBELL,
Postmaster General, United States.

SCHEDULE.

Leave New Orleans, 7th and 22d;
Arrive at Vera Cruz, 10th and 25th.
Leave Vera Cruz, 14th and 29th;
Arrive at New Orleans, 17th and 2d.

A few days thereafter, October 29th, the same parties transmitted to the Postmaster General a letter from Mr. Wm. H. Aspinwall, and added:

OFFICE OF THE MEXICAN OCEAN MAIL AND INLAND CO.,
New York, October 29, 1853.

DEAR SIR: Herewith please find a letter addressed to our firm from the president of the Pacific Mail Steamship Company, explaining why the schedule of running on the Pacific has been changed (thus rendering *useless* the *present schedule* between New Orleans and Vera Cruz;) and, further, approving the schedule which we had the honor of submitting for your consideration in our memorial, dated in Washington, D. C. Trusting the views of our case, to which your attention has been called, will induce a favorable decision, we have the honor to subscribe, with sentiments of regard and respect,

Your obedient servants,
HARRIS & MORGAN.

Hon. JAMES CAMPBELL,
Postmaster General of the United States.

of the Texas was arranged to conform to the movements of those boats. It happened, however, that the United States Mail Stean Company, although willing to perform extra service, and to let service speak for itself to Congress, was not willing to bind itse the government required, so as to shut out all prospect of extra r neration, by a liberal legislature, for extra duty; and, conseque the steamers, on intermediate weeks, on this side, were withdr The connexion being thus cut off, our company was obliged to di tinue its weekly trips, after the schedule of the Vera Cruz and pulco route had been arranged to conform to those trips.

My understanding with Mr. Rankin is, that when the route is f opened we will run steamers in the Pacific in due connexion; a am prepared to assign this duty to two of our smaller first- steamers the moment I am justified in so doing. Until then the its of the route can be tested by arranging a schedule to confor the arrivals at Acapulco, and, as far as possible, to the depar thence for San Francisco of our steamers now running; and the i ests of the government and of the public unite in recommending a course.

Very truly, yours,

WM. H. ASPINWALL,
Preside

Messrs. Harris & Morgan.

By the New Orleans and Vera Cruz schedule the steamers New Orleans on the 1st, 14th, and 25th of the month; and Vera on the 1st, 8th, and 22d. The third trip required, however, b contract had not ever been performed, and with the sanction o department, nor has it yet been required. A corresponding dedu in the pay has consequently been made, so that the compensatio been only in proportion to the service, and not the whole am

To this application, so strongly pressed, and against which no reasonable objection could be imagined, the Postmaster General, Mr. Campbell, replied, on November 3, 1853, as follows:

POST OFFICE DEPARTMENT,
November 3, 1853.

GENTLEMEN: In answer to your letter of the 26th ultimo, I have to state that, at the request of Mr. Carmick, the contractor, the present schedule of the New Orleans and Vera Cruz route was arranged to connect with the contemplated route across from Vera Cruz to Acapulco, which it was proposed to run in due connexion with an independent line of steamers between Acapulco and San Francisco—thus, with the route via Panama, giving a mail four times instead of twice a month, between the Atlantic States and California. It was not the intention to connect at Acapulco with the steamers of the Panama line, but, as above remarked, to establish an additional semi-monthly mail to run, via Vera Cruz and Acapulco, alternately at regular intervals with the line via Panama.

This arrangement was made with my predecessor, Mr. Hubbard, with whom, as Postmaster General, also a conditional contract was entered into for the part of the service between Vera Cruz and San Francisco, which contract was to take effect *only from the time it should be ratified by Congress;* nor was it to have any force or validity whatever until it should receive the sanction of Congress by the passage of an appropriation to carry it into effect. No such sanction has as yet been given by Congress; but, apart from this, and without troubling you with my views on the whole subject, it is simply necessary for me to say that there can be no recognition by this department of any arrangement by which the additional semi-monthly mail, clearly contemplated by the then Postmaster General, can be dispensed with.

The application, therefore, for a change of schedule on the route from New Orleans to Vera Cruz must now be considered without reference to any trips it may be proposed to run in connexion therewith beyond. The contract requires three trips a month; you propose but two, and it is unnecessary for me to say that the number of trips stipulated for in the contract will be required.

I am, very respectfully, your obedient servant.

JAMES CAMPBELL.

Messrs. HARRIS & MORGAN,
New Orleans, La.

The first paragraph of this letter asserts what all the parties interested well knew, and what Mr. Aspinwall states in his letter. The second paragraph is also the enunciation of more facts equally well known, and it was certainly gratifying to find him declaring "that there can be no recognition by this department of any arrangement by which the additional semi-monthly mail, clearly contemplated by the then Postmaster General, can be dispensed with." This is so far declaratory of the views of the Postmaster General, as to the contract made by Mr. Hubbard. But as that only took effect after an appropriation by Congress, the temporary schedule which was proposed for

the mean time, was the proposition to which these parties expected, but did not receive any answer whatever. The remedial portion of this communication is wanting. The Postmaster General entirely omits to state whether the change desired would be granted or refused. But as he lays much stress upon the time when the contract was to take effect, it might reasonably be supposed he would make any proper arrangement until that time arrived. But he neither intimated that he would or would not. So far he expressed no opinion about the merits of a temporary change of schedule so as to form the connexion with the Pacific steamers, and that is the whole question submitted for his consideration. Leaving the matter in doubt, instead of demonstrated, as may be inferred he believed from the use of "therefore" in the next paragraph, he adds:

"The application therefore for a change of schedule on the route from New Orleans to Vera Cruz must now be considered without reference to any trips it may be proposed to run in connexion therewith beyond. The contract requires three trips a month; you propose but two, and it is unnecesary for me to say that the number of trips stipulated for in the contract will be required."

The department was not desired to consider a change of schedule on the route from New Orleans to Vera Cruz, *without* reference to any trips it might be proposed to run in connexion therewith beyond; but *was* desired to consider it only in connexion therewith. That was the application, no more, no less. Two trips had only been run each month, and still two only continue to be run.

What was requested, was stated in the joint letter, wherein they "did respectfully petition that you will so alter the schedule between New Orleans and Vera Cruz for the two trips per month, now being performed, as will give them an opportunity of proving to Congress that this is by far the most expeditious route yet opened to the rich commerce of California."

To a proper understanding of the views of the Postmaster General, as expressed in this letter, some commentary was requisite; for standing alone it was unintelligible. Therefore it is not surprising to find him, in communicating the correspondence to Congress, making the effort to explain this most ambiguous epistle, as follows:

"The objections which I entertained to the change of schedule on the New Orleans and Vera Cruz route, proposed by Messrs. Harris and Morgan, in their letter of the 26th October, 1853, were twofold.

"1. That by authorizing the change proposed, the original intent and object of my predecessor, Mr. Hubbard, in entering into the conditional contract with Messrs. Ramsey and Carmick, which was to secure an additional semi-monthly mail between the Atlantic States and California, by alternating at regular intervals with the present semi-monthly line, via Panama, would have been entirely frustrated; and thus, instead of having a weekly mail between the Atlantic and Pacific, there would have been, as heretofore, only a semi-monthly communication."

He rejected the proposition because, by authorizing the change, the original intent and object of Mr. Hubbard in making the conditional

contract "would have been entirely frustrated." In his ardent desire to carry out the policy of his predecessor, the wishes and arguments of the company, of Charles Morgan and Mr. Aspinwall, all of whom were much interested in the success of Mr. Hubbard's plan, are disregarded.

All parties requested the change of schedule in order to demonstrate the wisdom of Mr. Hubbard, while the Postmaster General refused because he thought, in doing so, the object of Mr. Hubbard would have been entirely frustrated, although, in his letter of November 3, he understands and declares that the contract made by his predecessor "was to take effect only from the time it should be ratified by Congress, nor was it to have any force or validity whatever until it should receive the sanction of Congress by the passage of an appropriation to carry it into effect."

His second objection was,

"2. By changing the schedule so as to make connexions at Acapulco with the steamers of the Pacific Mail Steamship Company, that company would receive not only their regular compensation under their contract with the government, but extra pay under the contract of Ramsey and Carmick, although no additional service was really rendered by them to the department or the public."

How was it possible that extra pay could be demanded for services under a contract which had not yet commenced to take effect, and without "force or validity" prior to the time when Congress should give it vitality? When Mr. Hubbard arranged this through schedule, he did not apprehend extra pay being demanded for any service performed before congressional action, nor did the formation of the schedule imply that the mails were to be carried before an appropriation was made. If mails were so carried it certainly would be at the cost of the contractors; consequently, when they desired permission to carry mails, Mr. Hubbard issued an order in their favor "to carry a mail on the terms of their contract," and on the same date, March 7th, when informing the contractors of this order, he adds, "pay, if any, for said service commencing only in accordance with the *terms* of the contract." Why could not Mr. Campbell have done the same if there were any doubt on the subject? But why was this second objection made at all if the first objection were conclusive? and if not conclusive it was no argument whatever. The first objection either covered the whole ground, or did not meet the case at all; and if it covered the whole ground, the second objection was entirely uncalled for even if the facts were true upon which it was predicated, but which were unfounded. The Postmaster General could not perceive how the public were to be benefitted by this transmission of intelligence, which might leave New Orleans some ten days after the mails sent forward by the Panama line, and yet arrive with those mails at the same time at San Francisco; and in returning be transmitted by the Panama mail steamers to Acapulco, thence by land to Vera Cruz, and arriving in New Orleans some ten days in advance of the mails by the way of Panama. By this arrangement, which Mr. Campbell thought would not benefit the public or department, intelligence might have been sent between San Francisco and the Atlantic cities

in thirteen days, while by the Panama mail line the time taken was twenty-two or twenty-three days; and yet every arrival and departure of this intelligence at San Francisco would have been in the mail steamers bound to and from Panama. By this proposed arrangement, intelligence would have been transmitted between New Orleans and Acapulco in six days, as was frequently done, and between Acapulco and San Francisco direct in seven days more, the usual time taken. For there would not have been detentions in touching at San Diego and Monterey as required by the schedule, thereby saving two days. Thus intelligence would have been transmitted regularly to and received from California in twelve or thirteen days. But this would not, in the opinion of Mr. Campbell, benefit the public, although fires, and steamship wrecks, and commercial disasters, were then so rife along the shores of the Pacific, many of which were announced by intelligence transmitted over this line many days in advance of the mails, although without regularity, for the reasons above stated.

The Postmaster General does not repeat the objection taken in his letter of the 3d of November, that three trips per month are required by the schedule between New Orleans and Vera Cruz. He no doubt found, on reflection, that argument untenable, because founded on a misconception of facts. Perhaps he may have since discovered that his two subsequent objections are deficient in force for the same reason.

After this answer of the department, on the 3d of November, to the company and Charles Morgan, a few weeks only remained before the meeting of Congress in the next month, when the contract was to be submitted to Congress for its action. How stood the affair at this time? Mr. Campbell had been apprised of the existence of the contract, of the schedule, and of the order of Mr. Hubbard to deliver a mail if called for. On the 15th of June the company had informed him of the purchases and contracts for materials made, and of preparations then in progress. To this Mr. Campbell had replied on July 9th, disapproving of the contract, for, as at present advised, the route was impracticable; that, for the transportation of the mails between the Atlantic and Pacific, it appeared both inexpedient and unjust to go into this a still further expenditure for the service in question, and that the contract was conditional, a principle he could not sanction.

On the 23d of September he revoked the order to deliver a mail if called for, because he wished to be first satisfied that it would be in proper custody and transported safely through Mexico; thus giving up the objection that the route was impracticable, and also waiving his disapproval of the contract itself.

On October the 26th, the company reported to the Postmaster General that the preparations for the land service were completed, and ready to commence the carrying of the mails. At the same time the department was informed, by Mr. Morgan and Mr. Aspinwall, that the steamers were provided for the sea service, and they desired a change of schedule of the days of arrival and departure on the line between New Orleans and Vera Cruz, so that the merits of the enterprise, before the contract took effect by an appropriation by Congress, *might* be fairly tested. The letter of the 26th of October was an-

swered by the Postmaster General on the 3d of November following, in which it was stated that there could be no recognition, by the department, of any arrangement by which this additional semi-monthly mail, clearly contemplated by Mr. Hubbard, his predecessor, would be dispensed with. By this the contract was not only sanctioned, but also the department intimated that, both in letter and spirit, it must be carried out. The Postmaster General, therefore, refused to change the schedule prepared by Mr. Hubbard, because, by so doing, he imagined the object which his predecessor had in view might be frustrated, nor sanction the carrying of a mail, lest extra pay might be demanded.

On the 12th of November, Mr. Carmick, one of the contractors, addressed a letter to the Postmaster General, in which he alluded to a personal interview on the day previous, and stated that they "have asked no remuneration from the government while pursuing this enterprise, but have gone to work at their own expense, and proved the entire feasibility of this rapid communication, without the least hope or expectation that the department should, in any way, be subjected, either directly or indirectly, to an acknowledgment of responsibility for future remuneration" for these extra services.

Thus stood the question at the opening of Congress, when the Postmaster General sent his annual report to that body. What was advanced in that document, respecting the contract, is so remarkable, that, although it may be superfluous, it is here inserted, as follows:

On the 3d of March, 1853, Postmaster General Hubbard concluded a contract with Messrs. Ramsey & Carmick, of New York, at $424,000 per annum, for service semi-monthly from Vera Cruz, Mexico, by Acapulco, San Diego, and Monterey, to San Francisco and back, in thirteen days each way—being an extension of two of the trips on the New Orleans and Vera Cruz line, through Mexico, for the purpose of conveying the mail, and thus making one through line in sixteen days between New Orleans and San Francisco; a copy which was communicated to the Senate on the 11th of March. This contract contains a stipulation that it shall not have any validity unless Congress should sanction it by the passage of an appropriation to carry it into effect.

On the 16th of June the department received a communication from Robert G. Rankin, president of the Ocean Mail and Inland Company, who states that that company is the real party to the contract entered into by Messrs. Ramsey & Carmick, reporting progress towards putting service into execution. To this communication the following reply was sent by me on the 9th of July:

"Your letter of the 15th ultimo came duly to hand. My attention having been specially called to the circumstances connected with the contemplated line to the Pacific, via Vera Cruz and Acapulco, I feel it my duty, after due deliberation, to inform you that the conditional contract entered into between my predecessor, Mr. Hubbard, and Messrs. Ramsey & Carmick, for the conveyance of the mails over this line to San Francisco, does not meet with my approbation.

"In the first place, as at present advised, I consider the route impracticable for mail purposes.

"In the second place, the sums of money yearly drawn from the the treasury from contracts which have for several years been, and are still, in force, for the transportation of the mails between the Atlantic and the Pacific are very considerable, amounting to about $731,868. In view of this fact, and of the many sections and neighborhoods in the different States which are either greatly restricted in or deprived altogether of mail facilities, it appears to me both inexpedient and unjust to go into the expenditure of a still further sum of $424,000 for the service in question.

"Moreover, I disapprove of the principle upon which this contract is made. In my opinion, if the Postmaster General has the right to make such a contract at all, it ought to be made without the restriction or limitation contained in yours, by which its force or validity is made to depend upon the passage of an appropriation by Congress to carry it into effect. I am unwilling to recognize any contingency of this kind, because, although the contractors may, under such conditional arrangement, establish no legal claim for compensation, they may, nevertheless, go on and incur expenses, in the expectation that they will be paid, and Congress, more from private sympathy than from public policy or right, be at length induced to yield to a measure to which its prior sanction never could have been obtained."

Since that time the department has not heard from the Mexican Ocean Mail and Inland Company.

If, by inserting his letter of the 9th of July, the Postmaster General intended to convey the impression that these were his sentiments when his annual report was transmitted to Congress, he certainly had not acted with candor to those who relied upon his various communications, opinions, and intentions, expressed subsequently to the 9th of July, and already given above. If they were not his sentiments at the date of his annual report, but only those of the 9th of July, by their insertion in that document, without any qualification or comment, it was clearly acting without frankness to the representatives of the nation, in communicating to them opinions and intentions which he did not then entertain. But he went further, and entirely ignored all the correspondence on the subject with the department subsequent to the 9th of July, in the unqualified and emphatic assertion that "since that time the department has not heard from the Mexican Ocean Mail and Inland Company." It was certainly objectionable to give only a small portion of a correspondence, but it was certainly more objectionable to declare that the department had received nothing further while other correspondence existed, and which was afterwards produced by the Postmaster General himself. The important letter from the company of the 26th of October was not only received, but answered, by the Postmaster General, on November 3d, while the extended letter of Mr. Carmick of the 12th of November had actually been preceded by a personal interview on the previous day. The Postmaster General thus, in his annual report, conveyed the impression to Congress that the enterprise and contract had been abandoned, while the correspondence on file in the department, which he had under consideration and still fresh in his memory—for it appears from the published correspondence he had devoted some time to its contents—

showed that in the preparation for the land and sea service more than a half million of dollars had been expended, and the line was ready for the transportation of the mails according to the contract.

There was a letter addressed to the department on the 23d of November, by Mr. Rankin, which it seems from the statement of the Postmaster General did not reach its destination, from some cause unknown, until two months after its date, although regularly mailed in November. This communication was "to explain the real character of the relations this company sustains to the contract, the obstacles to the non-fulfilment of it by a date as early as was anticipated, and a few remarks explanatory of the route." The obstacles to the non-fulfilment at as early a date as was anticipated in August were therein stated to be the withdrawal of the extra boats on the Pacific side, which broke the connexion at Acapulco, and consequently prevented the performance on the schedule days between Acapulco and San Francisco. All of which is a repetition of the correspondence in the months of October and November, and, of course, still in the recollection of the Postmaster General, as well as the fact stated by Mr. Aspinwall, that the steamers were prepared for the service. Mr. Rankin further informed the department that efforts were making to place steamers between Acapulco and San Francisco, to perfect the connexion according to schedule time, even before an appropriation. The department never acknowledged the receipt of this letter; but the Postmaster General, in his letter to the Speaker of the House of Representatives, remarks: "It was not deemed necessary to answer the letter of Robert G. Rankin, president of the Mexican Ocean Mail and Inland Comdany, dated November 23, 1853, and received at the department on the 30th of January, 1854. That they were not prepared to fulfil their conditional contract on the 23d of November, 1853, nine months after its execution, is therein conceded."

This assertion was, of course, not the first made on this subject entirely at variance with the fact. Mr. Rankin expressly stated that covenants had been made with the Pacific Mail Steamship Company for the performance of "all the conditions of the contract" for the sea service between Acapulco and San Francisco. And Mr. Aspinwall, on October 29, had informed the department that he was at that date prepared "to assign to this duty" two steamers then on the Pacific ocean. The conditional contract had not taken effect at the date of Mr. Rankin's letter, but the contractors were then prepared to carry out the contract whenever ordered by the department. But between New Orleans and Acapulco, where the schedule called for the mail being transported in eight days, Mr. Rankin wrote that the contractors "have repeatedly carried it in six days." In another paragraph of the same letter, in alluding to the route across Mexico, "the land service, as will be hereafter shown, (see Appendix,) has been performed, carrying an independent mail, in 60 hours (instead of 120 hours, schedule time.") The appendix accompanying this letter, consisted in part of reports from the contractors in Mexico of the mail line being established from Vera Cruz to Acapulco, and of the time taken to transport the mail between these cities in the months of August, September, October, &c., all of which was in corroboration of

the statement in the body of the letter that "the company have placed a portion of their rolling stock upon the road, at present equal to the transportation of fifty passengers per week from ocean to ocean. This rolling stock consists of the very best built Albany and Troy post coaches, Concord (New Hampshire) passenger, baggage, express, and specie wagons, and about 500 horses and mules, (at the last report 493.") This is the letter in which "is therein conceded," the Postmaster General asserts, "that they were not prepared to fulfil their conditional contract on November 23, 1853, nine months after its execution." The object of Mr. Rankin's letter was to report the contractors prepared to perform the service upon the passage of an appropriation, and to explain, that although ready in August, they were unable to run on schedule days, as early as was anticipated, in advance of the period for pay commencing, because the steamers were unable to run at irregular intervals, in advance of the date for compensation, although willing to carry the mail on the regular trips without pay. These were "the obstacles" to the non-fulfilment of the schedule contract time as early as was anticipated. But the contractors were then prepared, and the want of an appropriation was the obstacle which prevented them commencing the service. All this the Postmaster General well knew, without the repetition of the same facts by Mr. Rankin, and he must have remembered the cause of the "obstacles," although in his annual report he states that the department had not heard from the company since the 9th of July. The Postmaster General ought to have said that on the 23d of November, the contractors were prepared to carry out the conditional contract, but were prevented from commencing by obstacles which would always exist for the period prior to an appropriation. He would thus have stated the truth.

But to return to this annual report of December, 1853, the Postmaster General therein undoubtedly intended to inform Congress that at that time the contract did not meet with his approbation; while, on November 3d previous, he had declared to the parties interested, that "there can be no recognition by this department of any arrangement by which the additional semi-monthly mail clearly contemplated by the then Postmaster General (Mr. Hubbard) can be dispensed with," and would not change the schedule, because the intent and object of his predecessor "would have been entirely frustrated." He further gave Congress to understand that he, "as at present advised, considers the route impracticable for mail purposes." And this assertion is made in the face of the action of his two predecessors; of the cabinet; of the recommendation of a large number of senators; of many members of the House; of the mails being transported continuously for months over the route, carefully and in safety, in half the time contemplated by the contract; of the opinions of William H. Aspinwall and Charles Morgan; one the leading and most influential and wealthy gentleman in the Panama route and Pacific Mail Steamship Company, and the other holding a similar position in all respects towards the Nicaragua route. Mr. Aspinwall joining as a surety in the contract, and thereby pledging at least half a million of dollars for the successful issue of the enterprise, while as president of the Pacific Mail Steamship Com-

pany, he bound that corporation by covenants to the performance of the ocean service, and relying only for compensation upon performance in the time stipulated after an appropriation by Congress. Mr. Morgan, also joining in the undertaking on the Atlantic side, and expending funds in such preparations as to "embrace an investment of nearly $300,000 for this first portion of the enterprise." To all this array of cumulative evidence in its favor before the department, the Postmaster General interposes his solitary opinion that he, "as at present advised," considers the route impracticable for mail purposes. And yet he furnishes no evidence upon which this solitary opinion was predicated, nor who furnished the advice.

The objection to conditional contracts again made its appearance, while in the same document he reported, having made an important one of that kind on the southern route in Alabama, which he was desirous Congress should confirm by an appropriation.

The annual report of the Postmaster General, in December, 1853, is herein dwelt upon, not so much for the purpose of exposing its discrepancies, as to clearly present the position assumed by the head of the department in regard to this contract. The faith of the department was undoubtedly pledged to the contractors for frankness, candor and justice in this matter, of so much magnitude to them. They had entered into its conditions and stipulations, with its heavy guaranties and wealthy sureties, with the understanding that it would be submitted by the department to Congress for its sanction and approval. The contractors had made all their preparations for the performance of the service in accordance with their undertaking, and while thus engaged, Mr. Campbell had informed them that the department could not recognize any arrangement by which this additional semi-monthly mail, clearly contemplated by Mr. Hubbard, would be dispensed with. He would not even change the schedule under a contract, lest the intent and object of his predecessor in this would be frustrated. In his great desire that the mails should be carried safely and by proper persons by this line, he suspended their delivery to the contractors until the department simply should be first satisfied on that point. Thus duly apprised of the progress of the contractors, and thus informing them of his sentiments, and thus encouraging the enormous expenses they were assuming, the Postmaster General, in his annual report in December, 1853, unmindful of all this, and without regard to the good faith which ought to be preserved in every department, without regard to the heavy expenditures and liabilities of the contractors, without regard to the evidence and facts which had come to his knowledge, and without regard to the truth and candor which should characterize his communications to Congress, submitted the remarks cited above in his annual report, and at the same time withheld the contract and estimates, thereby annulling the contract by withholding from Congress the documents to act upon; and preventing action, moreover, by the suppression of facts, misstatements, and misrepresentations made at the same time to the representatives of the nation.

It may here, also, be noticed, that in the same annual report, the Postmaster General recommended another line for an additional semi-

monthly mail to California, in direct opposition to his former declaration, that no arrangement could be recognized by the department, whereby that of his predecessor would be dispensed with; and in opposition, also, to the report itself, wherein he repeats, as one of his objections, that any further appropriations for the Atlantic and Pacific mail service, would be "inexpedient and unjust." Yet, with all these assertions made by him, and repeated, he proposed an additional semi-monthly mail, which would not touch at San Diego and Monterey, and which would require the same number of days for the performance of the service, as the Panama route. His reason for preferring that line, was, because the department would save $124,000 per annum, while he forgot that the public would suffer a corresponding loss, from the delay in the receipt of their correspondence. Had the department applied for a clipper ship to perform this service, by the same process of reasoning, undoubtedly there might have been a still further saving in money. The department having thus virtually annulled the contract, made previously, the contractors were prejudiced in their rights, and at the same time ruined in their business. The immense accumulation of material, which they had collected for the enterprise, was thrown useless upon their hands; their credit in Mexico was paralyzed; their grants from that government, to procure which so much time and money had been expended, were in jeopardy; nearly fifty poor men, who were employed, had to be dismissed without any warning or preparation; and some six hundred animals, which could neither be sold, nor funds realized in time to feed, died of starvation, in a country where grain was in abundance.

At the same session of Congress, the Post Office Committee of the Senate reported an amendment to the appropriation bill, to carry out the contract. But, with the statements made by the department in the annual report, and which were believed at the time to be true, the contract seemed not only annulled, but the line abandoned by the contractors. At the last session, the same committee in the Senate reported a bill to indemnify the contractors, which passed that body without objection, and failed only in the House, on the last night of the session, from want of time to explain its provisions.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 286.

IN THE SENATE OF THE UNITED STATES.

AUGUST 14, 1856.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany Bill S. 453.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of H. and F. W. Meyer, report:

This claim, like that of Sturges, Bennett & Co., is for the repayment of overpaid duties. The amount is $187 60. The court decide in favor of the justice and legality of the claim. Judge Blackford dissents, on the ground that the payment was made without protest.

Reference is made, both by the court and the dissenting judge, to the opinions delivered in the case of Sturges, Bennett & Co., as containing the principles and reasonings applicable to this case.

The committee report the bill from the court and recommend its passage.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 287.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 453.]

JULY 28, 1856.—Received from the Court of Claims and referred to the Committee of Claims.
AUGUST 14, 1856.—Reported by Mr. BRODHEAD and ordered to be printed.

JAMES BEATTY'S EXECUTOR *vs.* THE UNITED STATES.

The opinion of the Court was delivered by Judge SCARBURGH.

James Beatty, late a merchant of the city of Baltimore, imported from Calcutta, into Baltimore, in January, A. D. 1845, by the barque Active, 3,197 bags of saltpetre, usually denominated crude saltpetre, and made due entry of the same for consumption, at the collector's office; and in his entry he erroneously, and by mistake, and for want of a knowledge of its character, described 2,197 bags thereof as "partially refined saltpetre," and 1,000 bags as "crude saltpetre," and free from duty, when the entire importation was "crude saltpetre."

The entire importation was reported by the revenue officers as "saltpetre partially refined," and a duty thereon, at the rate of ¼ of one cent *per* pound, amounting to $1,548 52 was exacted of the importer and paid by him. So much of the duty as was exacted on the 1,000 bags—amounting to $461 11—was paid under protest, and subsequently recovered in an action instituted by the importer against the collector.

The petitioner alleges, that the whole importation was "crude saltpetre;" that there is no such thing known in commerce as "partially refined saltpetre;" and that, in the commercial sense, all saltpetre is included under two denominations: "refined saltpetre," and "crude saltpetre."

We are obliged, at the present stage of this case, to assume that these allegations are true. The rule is well settled, that the denomination of articles in tariff laws, is to be construed according to the commercial understanding of the terms used; and that, whether the imported article is or is not known in commerce by the words or terms used in the tariff law, is a question of fact, and not of law—(United States *vs.* 112 Casks of Sugar, 8 Peters' R., 277; Elliott *vs.* Swartwout, 10 Peters, 151, 153; United States *vs.* Breed, 1 Sumner R., 164; Two Hundred Chests of Tea, 9 Wheaton R., 430; Curtis *vs.* Martin, 3 How. R., 106; Lawrence *vs.* Allen, 7 How. R., 785, 796–7.)

We also assume that, if there be any cases to which the statute law concerning protests is fully applicable, this is such a case. As, therefore, no protest was made *quoad* the subject now claimed, the question is directly presented for the consideration of this court, whether th want of the protest is conclusive against the petitioners.

In order to present an intelligible view of this question, it is proper to consider it (1,) as if the acts of Congress of March 3, A. D. 1839, and February 26, A. D. 1845, had not been passed; and then (2,) to enquire how far it is affected by those acts.

(1.) First then, what would be the rights of the petitioner if the acts of 1839 and 1845 had not been passed?

There can be no doubt, taking as we must for the present, the allegations of the petitioner to be true, that the money now claimed was paid to the United States by James Beatty, upon the supposition that the saltpetre entered "as partially refined saltpetre," was "partially refined saltpetre;" that in fact it was "crude saltpetre;" that, being "crude saltpetre," it was, under the act of 1842, free from duty; and that the money would not have been paid if the fact, that the subject on which the duty was assessed was "crude saltpetre," had been known to the importer. This, then, is a case where money, to which the party receiving it was not entitled, was paid under a mistake of fact, and it would not have been paid if the fact had been known to the party making the payment. In such a case, between man and man, the doctrine is too well settled to admit of doubt or question, that an action would lie to recover back the money, and that it would be unconscientious to retain it.

An impression at one time existed that, in order to recover back money paid under a mistake of fact, the party must show that at the time of payment he not only did not know the fact, but that he had no *means* of knowing it. The impression was, to some extent, countenanced in the case of Bilbie *vs.* Lumley, 2 East. R., 469; but it was founded chiefly on the *dictum* of Mr. Justice Bayly in the case of Milnes *vs.* Duncan, 6 Barn. & Cr., 671. It has, however, long since been abandoned. The more just and reasonable docrine, that the knowledge of facts, which would disentitle a party from recovering, must be a knowledge existing in the mind at the time of payment, is now well established.—(Kelly *vs.* Solari, 9 Mee. & W., 54; Bell *vs.* Gardiner, 4 Man. & Gr., 11.) Hence, where a party once had full knowledge of a fact, which he had forgotten at the time of making the payment, his forgetfulness of it was such a *mistake* of fact as entitled him to recover back the money.—(Kelly *vs.* Solari.) In that case, Parke, B., said: "If money is paid under the impression of the truth of a fact, which is untrue, it may, generally speaking, be recovered back, however careless the party paying may have been in omitting to use due diligence to inquire into the fact." It may often happen that the possession of the means of knowledge would afford strong evidence of actual knowledge, but there is no conclusive rule of law that, because a party has the means of knowledge, he has the knowledge itself.—(Bell *vs.* Gardiner.) Although, therefore, James Beatty might, by instituting the proper inquiry, have ascertained that there is no such thing known in commerce as "partially refined saltpetre," and that his whole importation was what is denominated in trade "crude saltpetre," yet, if at the time of payment he did not actually know this, he paid the duties thereon under such a mistake of fact as would, if it were a case between man and man, entitle him to recover the money back.

Prior to the act of March 3, A. D. 1839, there were two modes of

proceeding in such cases as the present: first, by a suit against the collector; and second, by petition to the legislative department of the government. If this case had occurred before the passage of the act of 1839, and whilst the money was still in the hands of the collector, the importer had given him notice of the mistake, and that he meant to hold him personally responsible for the money, or to use what seems to be the technical language applicable to this subject, had protested against its payment, there can be no doubt that an action therefor might have been maintained against the collector.—(Elliott *vs.* Swartwout, 10 Peters' R., 137; Swartwout *vs.* Gihon, 3 How. R., 110.) And there can be as little doubt that, although such notice or protest was essential to the maintenance of the action against the collector, it was in no way necessary to the support of the petition to the legislative department of the government. We speak now of both these modes of proceeding as alike applications for justice; for we hold, that in such a case as the present, a party was entitled, as a matter of right, to relief as much under the one as under the other. The only difference between them was, not in his right to redress, but that in the action against the collector he had an enforceable remedy, whereas, in his petition to Congress, he had not an enforceable remedy.

The right to recover in the action against the collector was based upon a well settled doctrine of the law of agency, that, where money is illegally demanded and received by an agent, he cannot exonerate himself from personal responsibility by paying it over to his principal. It proceeded upon the assumption that the money sued for belonged to the party paying it, and not to the agent's principal. The object of the notice was merely to warn the collector that the party meant to hold him personally responsible for the money. There was no prescribed form in which it was to be given, nor was it necessary that it should be in writing.—(Ibid.) The action had its origin in the principles of the common law, and was governed by them. The grounds on which it was maintained are well stated by Mr. Justice Daniel, in the case of Cary *vs.* Curtis, 3 How. R., 250. He said: "We all know that this action for money had and received is founded upon what the law terms an implied promise to pay what in good conscience the defendant is bound to pay to the plaintiff. It being in such a case the duty of the defendant to pay, the law imputes to him a promise to pay. This promise is always charged in the declaration, and must be so charged in order to maintain the action. It was upon this principle that the action for money had and received was sustained in the case of Elliott *vs.* Swartwout. There money had been taken by the collector for duties which were not imposed. This money lawfully belonged to the plaintiff; it was the duty, therefore, of the collector to pay it back to him. The collector was not bound to pay it to the treasurer, for the law did not command this disposition of it. It did not belong to the United States, who had no right, therefore, to demand it of him, and could not have recovered it against him, in a suit, if he had paid it back to the true owner. It being the duty of the collector to return what he had unlawfully taken, the law implied on his part a promise to do so; and on this implied promise, arising or inferred from a duty imposed upon him, the action was maintained.

The protest and notice were to him of no further importance than to warn him to hold over, and to take away an excuse he might otherwise have had from payment to his principal. It was his duty, as the law then stood, not to pay over, but to pay back to the party from whom he had collected without legal authority, when warned that this party should look to him for reimbursement, and not to his principal." These remarks require no comment. They fully sustain the views which we have presented.

If, however, the party had not discovered the mistake, or having discovered it, had not made his protest or given notice to the collector, before the latter had paid the money to the treasurer, no action could have been maintained against the collector. But still the money, which had been collected for duties not imposed by law, and which, therefore, did not belong to the United States, could not have become the property of the United States by the mere payment of it to the treasurer. The position that such a payment would have produced such a result, cannot be sustained upon any principle of law, or of reason, or of justice, or of Christian morals. How could right have been done between the injured importer and the United States otherwise than by a repayment of the money—the money of the importer which, by mistake, had fallen into the public treasury? In such a case existing between man and man there is no room for doubt as to the right of recovery; and where it occurred between the government and an individual, the obligation of the government to repay the money rested upon the same principle. There was not, and in the nature of things there could not have been, one measure of justice between man and man, and another between the United States and an importer. The same rule of right and justice governed both cases. As against the United States, although there was no remedy in the ordinary courts of justice, yet an application could have been made by petition to the legislative department of the government; not for a favor, but for justice; not for a mere gratuity, but for a legal right. To retain money thus falling into the public treasury was as unconscientious in the United States as it would have been in an individual who had received money under similar circumstances; and the legal duty or liability to repay it was the same in both.

Such was the law prior to the act of March 3, A. D. 1839.

(2.) We come now to inquire how far the question, whether the want of a protest is conclusive against the petitioner, is affected by the acts of 1839 and 1845.

The act of 1839 took away the right of action against the collector, (Cary *vs.* Curtis, 3 How. R., 236;) but it did not take away, or in any manner affect or impair, the right of petition to the legislative department of the government; nor is there one syllable in that act which favors the idea that, in order to constitute a legal demand against the United States for the repayment of money paid for duties not imposed by law, a protest is necessary.

The act of February 26, A. D. 1845, is as follows: "That nothing contained in the second section of the act" of March 3, A. D. 1839, "shall take away, or be construed to take away or impair, the right of any person or persons who have paid, or shall hereafter pay, money,

as and for duties, under protest, to any collector of the customs, or other person acting as such, in order to obtain goods, wares, or merchandise, imported by him or them, or on his or their account, which duties are not authorized or payable in part or in whole by law, to maintain any action at law against such collector, or other person acting as such, to ascertain and try the legality and validity of such demand and payment of duties, and to have a right to a trial by jury touching the same, according to the due course of law. Nor shall anything contained in the second section of the act aforesaid be construed to authorize the Secretary of the Treasury to refund any duties paid under protest; nor shall any action be maintained against any collector, to recover the amount of duties so paid under protest, unless the said protest was made in writing, and signed by the claimant, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof."—(5 Stat. at Large, 727.)

Prior to the act of 1839, as we have seen, an action might have been maintained against a collector, provided there was a protest or notice. In that action the importer had the right to have "the legality and validity of" the "demand and payment of duties" ascertained and tried, and "to a trial by jury touching the same, according to the due course of law." This is undeniable. The only object of the notice was to warn the collector not to pay over, and that he would be held personally responsible for the money. The question of "the legality and validity" of the demand and payment of the duties did not depend upon the notice or protest, but altogether upon other grounds. It is true, that the failure to make any objection to the payment, or, in other words, to make a protest, might have afforded *evidence* that the payment was *voluntary;* but, according to the principles of the common law which governed the action, the failure to protest could have had no other legal effect or operation upon the question of "the legality and validity" of the "demand and payment" of the duties. It would have had no effect whatever upon that question in a case where the payment was made under a mistake of fact, because such a payment was never regarded as *voluntary*, in the technical sense of that term. It is obvious, therefore, as we have already shown, that the protest was not *essential* to the validity of the demand against the United States, and was in no respect necessary to support the petition to the legislative department of the government for a repayment of the money. The want of a protest could be used on the hearing of such petition for no other purpose than that for which it could be used upon the question of the legality and validity of the demand of the duties in the action against the collector, namely, as *evidence* that the payment was *voluntary*. We do not mean to be understood as embracing in these remarks the question, whether the failure to make objection to the payment of duties could in any case operate by way of an *estoppel* in *pais*. That question, whenever it shall arise, must depend upon its own principles, and cannot affect the correctness of the views which we have presented.

The question now to be considered is, did the act of 1845 produce any change in these respects? That act was, to some extent, a decla-

ratory statute. The Supreme Court, in the case of Cary *vs* Curtis, had held that the act of 1839 took away the right of action against the collector, and the act of 1845 in substance declares that it was not the intention of Congress that the act of 1839 should have that effect. Its terms have already been quoted. As regards the action against the collector, the only essential change which the act of 1845 seems to have made, is to require that the protest shall be "in writing, and signed by the claimant at or before the payment of the duties, setting forth distinctly and specifically the grounds of objection to the payment thereof." There is nothing in that act which either expressly or by implication shows an intention to do more. The words used are plain, and we cannot intend that the legislature meant anything more than it has expressed. We do not sit here to enact laws; that important power is entrusted exclusively to the legislative department of the government. It is our business to declare what the law is in the particular case which we are called upon to decide. In the construction of a statute, when words of a plain and definite import have been used, we are not at liberty to disregard them. Where such words are used, the only safe course is to adhere to the words, and to *collect* the intention of the legislature from them. It has been the experience of the most enlightened judges, that it is dangerous to depart from the plain and obvious meaning of the words of a statute. We are not at liberty to *presume* the intentions of the legislature, but we must *collect* them from the words of the statute, and we have nothing to do with the policy of the law. "This is the true sense," says Mr. Dwarris, "in which it is so often impressively repeated, that judges are not to be encouraged to direct their conduct 'by the crooked cord of discretion, but by the golden metwand of the law;' i. e., not to construe statutes by equity, but to collect the sense of the legislature by a sound interpretation of its language, according to reason and grammatical correctness."—(1 Dwarris on Statutes, pp. 702, 703.) We are constrained, therefore, to say, that there is nothing in the act of 1845 which indicates an intention to give to the action against a collector a different legal effect from that which it had prior to the act of 1839. The failure to make a protest is no more conclusive against an importer now than it was before the passage of the act of 1845.

But it is supposed that some remarks made by Mr. Chief Justice Taney, in the case of Lawrence *vs.* Caswell, (13 How. R., 496,) militate against these views. Those remarks are as follows: 'But it is proper to say, in order that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted, the court mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of objection. Where no such protest is made, the duties are not illegally exacted in the legal sense of the term. For the law has confided to the Secretary of the Treasury the power of deciding, in the first instance, upon the amount of duties due on the importation. And if the party acquiesces, and does not by his protest appeal to the judicial tribunals, the duty paid is not illegally exacted, but is paid

in obedience to the decision of the tribunal, to which the law has confided the power of deciding the question.

"Money is often paid under the decision of an inferior court, without appeal, upon the construction of a law which is afterwards, in some other case in a higher and superior court, determined to have been an erroneous construction. But money thus paid is not illegally exacted. Nor are duties illegally exacted where they are paid under the decision of the collector, sanctioned by the Secretary of the Treasury, and without appealing from that decision to the judicial tribunals by a proper and legal protest. Nor are they within the principle decided by the court in the case before us."

It must be conceded, that this language should be construed with reference to the case before the court, and considered in connexion with the context. The case was, an action brought against a collector under the act of 1845. The context is as follows: "The duty of 100 *per cent. ad valorem* was chargeable on the quantity of brandy actually imported, and not on the contents stated in the invoices. This over charge was therefore illegally exacted, and the defendants in error were entitled to recover back the amount." If this language had gone forth to the world unexplained, the learned Chief Justice might have been understood as announcing a principle which he did not mean to announce. Taken by itself it, in plain and unambiguous terms, declares, that where there is an overcharge of duty, the duty is *therefore* illegally exacted, and the party paying is entitled to recover back the amount. Nothing is said about a protest, or of what character the protest shall be. And yet this language was used in a case occurring under the act of 1845. Without an explanation, the opinion of the Supreme Court might have been understood to be, that a protest is not necessary to sustain such an action. In order, therefore, that the opinion of the court might not be misunderstood, the Chief Justice proceeds to give the explanation, which is to be found in the remarks which have been quoted. The whole object of it was more fully to declare the grounds on which an action, under the act of 1845, can be maintained.

Much stress was laid in the argument of this case upon this language: "Where no such protest is made, the duties are not illegally exacted in the legal sense of the term." It was urged, with great earnestness, that it was used in its broadest and most general sense. But it is clear that it is not to be so understood. Its object was to explain the meaning of that "illegal exaction," which the learned judge had just said would entitle a party to recover back the money paid, in an action against the collector. He accordingly, in substance says that, to maintain such an action, the law requires a protest, stating specially the ground of objection, and in the sense of that law there can be no illegal exaction without such a protest. This was indubitably his meaning. He would justly be regarded as using language wholly extra-judicial, if he is to be understood in any other sense.

It was urged by the solicitor that the chief justice is to be understood as giving an exposition of the act of August 8, A. D. 1846. We think that there is no just ground for supposing that such was his

intention. That act in no way related to the case which he was considering. It had not been referred to by counsel, nor was a reference to it necessary to the elucidation of his views. And besides, if the Supreme Court is to be understood as putting a construction upon the act of 1846, then it follows, that in the opinion of that court, no duties can be duties *illegally exacted* within the meaning of that act, unless they were paid under the protest required by the act of 1845. But many of the cases provided for in the second section of the act of 1846, originated long before the act of 1845, for it expressly embraces "such sums of money as have been illegally exacted * * * * since the third of March, 1833." Prior to the act of 1845, it was not usual in a protest to state the grounds of objection, nor was it necessary to do so. The construction, therefore, imputed to the Supreme Court, if adopted, would, in all probability, to a great extent, repeal the act of 1846.

The remarks, which refer to the decision of the Secretary of the Treasury, are to be explained in the same way as those, which we have already particularly noticed. And, moreover, it was not the intention of the Supreme Court to characterize the decision of the Secretary of the Treasury as a judicial decision; for no part of the judicial power, under the Constitution of the United States, can be conferred upon an executive officer. Every ministerial officer is obliged to make a decision in the first instance, in every case in which he is called upon to act.

If the act which he is required to do be *executive*, and not merely *ministerial* in its character, his decision is final as regards executive action, and no appeal lies from it to the courts, nor can they revise his judgment.—(Decatur *vs.* Paulding, 14 Peters' R., 497; Bradshear *vs.* Mason, 6 How. R., 92.) But it is not conclusive upon the rights of the party interested in the sense in which a judicial decision would be. He would still be entitled to appeal to Congress.—(14 Peters' R., 522; Reeside *vs.* Walker, 11 How. R., 272.)

It was such a decision, on the part of the Secretary of the Treasury, to which the chief justice referred; and all that he meant to say was, that if the importer does not appeal from it to the judicial tribunals, in the manner prescribed by the act of 1845, he cannot maintain an action under that act against the collector; but in the sense of that act the duties are not illegally exacted.

That the chief justice is to be understood as we understand him, is rendered yet more manifest by what was said by him in the case of Mason and Tullis *vs.* Kane, in the circuit court of Maryland. In that case there was a protest, but not such a protest as the act of 1845 requires, and the action failed on that ground. In delivering the opinion of the court, the chief justice said: "It is unnecessary, therefore, to inquire whether the objections now made would have been valid if set forth in the protest. If improperly charged, it is, no doubt, yet in the power of the administrative department to do justice to the claimant. But no action can be maintained under the act of 1845." Now, it seems to us, that if it was the opinion of this learned judge, that where there is no protest duties are not illegally exacted, understanding those terms in their largest and most comprehensive sense,

but on the contrary, however improperly they be charged, or under whatever circumstances they be paid, if there be no protest, the party has no just claim or legal demand against the United States for repayment, he could not have made the suggestion, that nevertheless, in such a case the administrative department would have it in its power to do justice to the claimant. Upon the hypothesis that his opinion goes to the extent contended for, he must have considered that justice had already been done according to law, and did not still remain to be done anywhere—that the claim had been adjudicated and settled by "the decision of the tribunal to which the law has confided the power of deciding the question," and the money paid without appeal to a higher tribunal. He surely did not suppose that the administrative department could give relief in a case so circumstanced.

But it is urged that the suit against the collector is substantially a suit against the United States, and that, therefore, if a party fails to avail himself of that remedy, he can have no just claim against the United States. In the case of Mason and Tullis *vs.* Kane, to which we have already referred, the following remarks were made by Mr. Chief Justice Taney: "For this suit, although in form against the collector, for doing an unlawful act, is, in truth and substantially, a suit against the United States. The money is in the treasury, and must be paid from the treasury if the plaintiff recover. And as the United States cannot be sued and made defendants in a court of justice without their consent, they have an undoubted right to annex to the privilege of suing them any conditions which they deem proper. And in the exercise of this power they have granted this privilege in the form of a suit against the collector, where duties are supposed to be over charged, upon condition that the claimant, when he pays the money, shall give a written notice that he regards the demand as illegal, and means to contest the right of the United States in a court of justice; and stating also, at the same time, distinctly, the specific grounds upon which he objects. This is the condition upon which he is permitted to sue the collector, and thus to appeal from the administrative to the judicial department of the government. It is a condition precedent." But it must be recollected that this was the very case in which the same distinguished judge said: "If improperly charged, it is, no doubt, yet in the power of the administrative department to do justice to the claimant." We have already shown, that the latter remarks are wholly inconsistent with the conclusion which has been deduced from the former. The consequence of a failure to make a proper protest is clearly and forcibly stated in the concluding sentence of the opinion of the court: "But no action can be maintained under the act of 1845."

The truth is, that in order to give to the act of 1845 the construction contended for on the part of the United States, it would be necessary to insert in it words which it does not contain. It seems to contemplate two modes of reimbursing to an importer money paid for duties not imposed by law—the one by the action of the Secretary of the Treasury, and the other by a suit against the collector. Both these modes, by the express terms of the act, require a protest in writing, signed by the claimant stating the grounds of objection. But

there is still another mode known to the law, and familiar in the practice of the government. It is by petition to the legislative department of the government, and is not embraced by the act of 1845. In order to embrace it by that act, words must be added thereto, or inserted therein to the following effect: "Nor shall any money paid for duties, not imposed by law, be refunded by the United States to any claimant, unless, at or before the payment thereof, he make such a protest as is required by this act." To add words like these to a statute is far beyond the power of the judiciary. It falls exclusively within the province of the legislature. How ever much we might suppose that an enlightened public policy requires that such a provision should be made by law, we have no authority to make it. In the construction of a statute, we can only declare what it is, not what it ought to be.

The condition, then, of the petitioner, at the time of the passage of the act of Congress establishing this court was, that he had a just claim against the United States for money paid them by mistake for duties not imposed by law, but no enforceable remedy for its recovery. He had, by reason of the very mistake under which the payment was made, lost his remedy against the collector, and the Secretary of the Treasury had decided, that his claim is "inadmissible under the laws." But his right to petition the legislative department of the government still remained in unimpaired vigor. His claim, as at its origin, still rested on an implied contract on the part of the United States to repay him the money. This money was his property, not theirs; and they were obliged, by the ties of natural justice and equity, to refund it; and, being so obliged, the law, according to principles universally acknowledged, (Cary *vs.* Curtis, 3 How. R., 249,) had implied a promise on their part to repay it to him. This promise had not been performed. The money was still in the treasury of the United States, and his right to demand its payment had not been waived or released. On the contrary, his claim still continued unsatisfied and undischarged. But the act to which we have referred makes it the duty of this court to "hear and determine all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States." (10 Stat. at Large, p. 612.) This case comes within the very words of that act. It is emphatically one of the cases for which it was designed to provide. It is neither more nor less than a claim founded on an implied contract with the government of the United States. It seems to us, therefore, that if it be sustained by proof, the petitioner's right to relief is unquestionable.

Let an order be made authorizing the taking of testimony in this case.

BEATTY'S EXECUTOR *vs.* THE UNITED STATES.

Dissenting opinion delivered by Judge BLACKFORD.

I dissent from the judgment of the court in this case.

The petition, which is attached to this opinion, does not allege that the duties sued for were paid under protest.

The only question, therefore, which need be considered is, whether over paid duties, paid without protest, can be recovered back by a suit in this court?

That question ought, in my opinion, to be decided in the negative.

The opinion on this subject, delivered by me a few days ago, in Sturges and others *vs.* the United States, is annexed to this opinion, and is to be considered a part of it.

The act of Congress of 1845, referred to in that opinion, after saying that nothing contained in the second section of the act of the third of March, 1839, "shall take away, or be construed to take away, or impair the right of any person or persons who have paid or shall hereafter pay money, as and for duties under protest, to any collector," &c., concludes as follows: "Nor shall any action be maintained against any collector to recover the amount of duties so paid under protest, unless the said protest was made in writing and signed by the claimant, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof."—(5 Stat. at Large, 727.) In the opinion, in Sturges and others *vs.* the United States, I stated that I considered that act of 1845 to be as applicable to a suit in this court, against the government for over paid duties, as it is to a suit for that cause, in any other court, against the collector. When that opinion was delivered, I was not aware that the principle just alluded to had been recognized by any of the courts; yet, as it appeared to me so perfectly clear, I did not hesitate to adopt it. But I have since found that the same doctrine, namely, that a suit against a collector for over paid duties is, in substance, a suit against the United States, had been expressly decided by the circuit court of the United States for the Maryland district. The following is the language of the court:

"For this suit, although in form against the collector for doing an unlawful act, is, in truth and substantially, a suit against the United States. The money is in the treasury, and must be paid from the treasury, if the plaintiff recover. And as the United States cannot be sued and made a defendant, in a court of justice, without their consent, they have an undoubted right to annex to the privilege of suing them any conditions which they deem proper. And, in the exercise of this power, they have granted this privilege in the form of a suit against the collector, where duties are supposed to be overcharged, upon condition that the claimant, when he pays the money, shall give a written notice that he regards the demand as illegal, and means to contest the right of the United States in a court of justice; and stating also, at the same time, distinctly, the specific grounds upon which he objects. This is the condition upon which he is permitted to sue the collector, and thus to appeal from the administrative to the judicial department of the government. It is a condition precedent."—(Mason and Tullis *vs.* Kane, MSS.)

That opinion was delivered by Chief Justice Taney, and decides that a suit against the collector for over paid dues is, in truth and substantially, a suit against the United States. And it also decides that such a suit connot be sustained if the duties were paid without protest.

If that decision is correct, as it undoubtedly is, it shows conclusively that the suit now before this court, which is a suit against the United States for over paid duties, paid without protest, is forbidden by the act of 1845, and of course cannot be sustained.

The claimant's main argument is, that his testator's money has been unlawfully obtained by the government, and that he has therefore a right to recover it back. The fallacy of that argument consists in assuming what is not true, namely, the unlawfulness of the collection of the money. The truth is, that the money having been paid without protest, was lawfully received by the collector and by the government.

Congress, as a matter of policy, enacted the aforesaid act of 1845; and the Supreme Court of the United States have decided, as they were bound to decide, that, according to that act, duties paid without protest are not illegally exacted.—(Lawrence *vs.* Caswell, 13 Howard, 496.) The Court of Claims, like every other court, is bound by the law; and as the act of 1845 has forbidden any suit to be brought against the collector (which, it is decided, would be, in truth, a suit against the United States) for duties paid without protest, this court cannot, whilst that act is in force, sustain a suit against the government for duties so paid.

The act of 1845 fixes a reasonable time within which objections to the duties charged may be made, and says that if the objections are not made within the time, the duties shall not be recovered back. The object of that act is to secure prompt and final settlements relative to the duties, whilst the facts can be easily ascertained, and to prevent the continual disputes and frauds which would be occasioned by delay. The act appears to be founded on sound policy, but whether it is so or not is a question for the consideration, not of the courts, but of the legislature.

I am of opinion, for the above reasons, that this suit for over paid duties, paid without protest, cannot be sustained.

JAMES BEATTY'S EXECUTOR *vs.* THE UNITED STATES.

Scarburgh, J., delivered the opinion of the court.

It is conceded by the solicitor, and the court find, that the allegations of the petition filed in this case are established by the evidence. It is also conceded by the solicitor, that, the money now sought to be reclaimed having been paid under a mistake of *fact*, the importer being under the mistaken impression, at the time of the payment, that the saltpetre on which the duty was paid was "partially refined saltpetre," when in fact it was "crude saltpetre," there being no such thing known in commerce as "partially refined saltpetre," the petitioner is entitled to relief. In the opinion heretofore delivered by this court, we came to the conclusion, that, if the allegations of the petition should be sustained by the evidence, the petitioner's right to relief would be unquestionable. They are fully sustained, and we shall

report to Congress a bill in favor of the petitioner for one thousand and eighty-seven dollars and forty-one cents.

The reasons for this opinion will be found in the opinion heretofore delivered by this court in this case, in the opinion of this court in the case of Henry and Frederick W. Meyer *vs.* The United States, and in the opinions thereto appended.

BEATTY'S EXECUTOR *vs.* THE UNITED STATES.

Judge Blackford's dissenting opinion.

Suit for over paid duties.

I dissent from the final judgment rendered in this case by a majority of the court in favor of the claimant.

The ground of my dissent is, that the duties sued for were paid without any objection, either written or verbal. The payment was therefore voluntary, and cannot be recovered back. That doctrine is settled by the common law, and by the act of Congress of 1845. Indeed, the act of Congress requires a written protest, stating distinctly and specifically the grounds of objection to the payment.—(5 Stat. at Large, 727; see Marriott *vs.* Brune, 9 Howard, 619, 636; Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

The reasons of my dissent are given at length in the opinion heretofore delivered by me, in this case, on the question as to the validity of the petition; which opinion is hereto appended, and made part of this opinion.

The dissenting opinions heretofore delivered by me in the cases of Sturgess, Bennet & Co. *vs.* The United States, Spence and Reid *vs.* The United States, and Wood *vs.* The United States, are also hereto appended, as a part of this opinion.

34TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 288.

IN THE SENATE OF THE UNITED STATES.

AUGUST 15, 1856.—Ordered to be printed.

Mr. PEARCE made the following

REPORT.

[To accompany Joint Resolution S. 42.]

The Finance Committee, directed by resolution of the Senate on the 8th instant, instructed "to enquire into and report upon the propriety of correcting by law the present erroneous statement of the relative values of the dollar and the pound sterling, and, further, upon the feasibility of some mutual plan whereby the relative values of the unitary coins aforesaid can be made easily and exactly commensurable," report as follows:

That if the first item mentioned above, viz: the nominal ratio between the dollar and the pound sterling, had been referred singly, they would have no hesitation in recommending a change in the ratio now assigned by law, but already shown in congressional documents and elsewhere to have been adopted erroneously, upon insufficient information, from misapprehension or in haste, and an assignment of a ratio founded upon the intrinsic value of the actual coins, and upon the quantity of fine metal contained in the respective units aforesaid.

But connected with this item is the second, which looks to a possible change of intrinsic values aforesaid; the effect of which change would be, of course, to render necessary a fresh alteration in the nominal ratio that would at this moment be assigned. The object of this second item the committee regard as of great importance; nor can any measure be readily suggested whose realization would mark a more decided epoch in the history of commerce.

With regard to such realization, reasonable hopes may be entertained of its feasibility, although at the present late period of the session the number and extent of the details that would have to be considered and developed preclude any exposition of the ground of these hopes. Still further, before any plan of realization could be matured and submitted, communications have to be entered into with the functionaries of the British government who are now already charged with investigations upon the same or nearly allied points. For such communications, even with more time at disposal, the Finance Committee are not conveniently situated.

All these considerations and others, then, induce the committee to recommend that the whole subject matter be referred to the Treasury Department, with authority to institute, through some suitable commissioner, the proper examinations, establish the necessary correspondence, hold the conferences that may be requisite, and report to the Senate during the next session of Congress the result of the inquiry.

To this end the committee offer and recommend the passage of the following resolution.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 289.

IN THE SENATE OF THE UNITED STATES.

AUGUST 15, 1856.—Ordered to be printed.

Mr. REID made the following

REPORT.

[To accompany Bill S. 458.]

The Committee on Revolutionary Claims, to whom were referred the memorial of the heirs of Colonel Isaac Shelby, have had the same under consideration, and submit the following report:

The military service of Colonel Isaac Shelby is too well remembered to require a repetition here. He engaged in the defence of his country at the very dawn of the revolution, and his distinguished conduct throughout the whole struggle for independence was marked by skill, bravery and disinterested patriotism, involving great personal and pecuniary sacrifices. His services appeared almost indispensable to the country, and by his valorous deeds he inspired courage in the army, and revived the hopes of his desponding countrymen. Indeed, at some periods, he seemed to turn the scale which decided the fate of the American revolution.

For his eminent services he claims, and will ever continue to receive, the lasting gratitude of the American people, but for his pecuniary sacrifices no adequate reward has been bestowed. His descendants consequently shared the sacrifices, as well as the glory, of their ancestor.

Your committee, therefore, are of opinion that, in consideration of the distinguished military services and meritorious sacrifices of Colonel Shelby, his descendants should receive the commutation pay of a colonel of infantry, and have reported a bill for that purpose.

34TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 290.

IN THE SENATE OF THE UNITED STATES.

AUGUST 15, 1856.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany Bill S. 457.]

The Committee of Claims, to whom was referred the report from the Court of Claims in the case of Thomas Rhodes and Jeremiah Austill, report:

This claim arises under a contract for transporting the mail between Mobile and Pascagoula. The petitioners having proposed to carry the mail for $14,000 per annum, provided $4,000 were added for the first year to enable the contractors to construct a piece of road. The proposal was accepted, without any remark relative to the construction of the road. The contractors went on and constructed the road—which proved to be of great public utility—but no pay was allowed them for it. The Court of Claims have decided that they are entitled to the amount for which they proposed to perform the work, and report a bill for its payment, in which the committee concur.

RHODES & AUSTILL *vs.* THE UNITED STATES.

Opinion of the court on the evidence delivered by Chief Justice GILCHRIST.

Depositions have been taken in this case, the substance of which is as follows:

Ursin Raby deposes that there were no roads suitable for stages in the years 1828 and 1829 between Mobile and Pascagoula, and claimants were obliged to make and did make one whereon to convey the mails. This was done about twenty-eight years ago. He was employed by the claimants to work on the road while it was being made, and though he does not know its actual expense, he is satisfied from his knowledge of the country over which it was made and of the work done upon it, that it could not have been done for less than $7,500. The road was used by subsequent contractors in transporting the mails between Mobile and New Orleans until the route was changed to one by water.

Lemuel Childress deposes that there was no road at all when the claimants became contractors that it would be possible for a coach to travel on. They built a road, and when completed they transported

the mail on it. He superintended the work upon the road as overseer. The contractors were engaged in building the road from November, 1828, to some time in July, 1829, and he thinks it must have cost $7,000. He worked on the road four weeks as overseer, and during that time there were, upon the average, twenty hands engaged upon it. After he ceased to be overseer, he lived on the road and had business upon it, and knows that they continued to work on it, and carried the mail. The bridges were not built by the hands working on the road, but were built by contract, with the exception of one. The greater part of the road was used by subsequent contractors in transporting the mail, and continued to be used until the route was changed to that by water.

Walter Drane says that there was no road at all suitable for transporting the mail, and the claimants were obliged to construct a road, and when it was completed, which was in 1828, the mail was transported on it until about May, 1829. The first construction of the road cost the claimants $4,000, exclusive of ditches and causeways. After the road was opened and winter had set in, a full third of the road had to be ditched and causewayed to enable the stages to pass over it, and owing to the unfavorable country over which it ran, lighter vehicles had to be procured by the contractors than they had begun to use at first. All this cost them $4,000 more, making the whole cost incurred by them $8,000. He is well acquainted with the road, and is satisfied that $8,000 would be no more than a fair compensation for the labor and money put upon it.

Among the papers transmitted to us by the House there are copies of letters constituting a voluminous correspondence with the department on the subject of this mail route. On the 1st of August, 1828, the honorable John McLean, then Postmaster General, wrote to the postmaster at New Orleans, desiring him to examine the route from Mobile to Pascagoula in connexion with the postmaster at Mobile. and saying, among other things, "in making your arrangements, it would be well to ascertain the quality of the ground on which the road is now opened or may be located, also the expense that may be necessary to make it a good road for stages."

This information could have been useful only upon the supposition that the expense would properly be considered in determining the amount of compensation to be paid for transporting the mail.

Prior to the 7th of October, 1828, the postmasters of Mobile and New Orleans made a report on the subject, which met with the approbation of the Postmaster General.

On the 10th of August, 1828, the claimants proposed to carry the mail for the sum of $14,000 per year, "the road from here (Mobile) to Pascagoula to be made by or at the expense of the United States. The road I will be obligated to make within sixty days from the time I may receive the notice, for the sum of $4,000." On the 7th of October the department decided to accept his "proposal to transport the mail by land and water," as hereinbefore stated.

The claimants thereupon proceeded to make the road, and completed it according to the offer, and commenced running the mail on the 17th of December. They had no reason to think the Postmaster General

entertained any doubt about his power. They had no reason to believe that he did not think he had the power to build the road at the expense of the United States, according to their proposition of the 10th of August. On the 8th of October, the day after the date of Mr. Bradley's letter of acceptance, Austill wrote the Postmaster General, that he had been informed by Mr. Owen (a representative from Louisiana) that the department thought they had no power to contract for building the road to Pascagoula. He then said: "Therefore, to obviate the difficulty that may exist thereby, I will make another proposal, if it should not be too late, in behalf of myself, Thomas Rhodes, William Mathison, and Robert Williamson, all of this State; and that is, we will transport the mail, within the time and manner first proposed, at the following rates, to wit: for the first year at $18,000, and each of the succeeding three years at $14,000 per annum." This was in substance the first proposal.

After Mr. Bradley's letter of the 8th of October, accepting the first proposal, nothing further was said by the department until Mr. Bradley's letter of the 16th of February, 1829, in which he says to Austill that on the 29th of December a letter was directed to be written to him purporting that the Postmaster General could not pay him for opening the road. He also says, "that expense he cannot meet in any case without a special law for the purpose, nor has he in a similar case recommended an appropriation for a similar road; that province belongs to your representative in Congress. Until this day I had thought that the letter was sent you on the 29th of December, as it was directed to be done."

Even if the letter had been written on the 29th of December, it would have been too late, for the road had already been built by the claimants a fortnight before, and the mails had been transported upon it.

On the 23d of March, 1848, Judge McLean wrote the Hon. John Gayle: "The construction of the road was important to the public, as it shortened the distance of the most important southern route from New Orleans. It is probable that more was saved to the public by the establishment of the road in the transmission of the mail over it for four years than would pay the cost of its construction. In addition to this, the increased speed with which the mail was conveyed between New Orleans and Mobile was important to the commercial interests of those cities, and of all other places connected with them. Mr. Rhodes seems to have a strong equitable claim, and I trust it will be duly considered by Congress."

On the 2d of February, 1830, Mr. Bradley, Assistant Postmaster General, wrote to Mr. King, of the Senate, that the making of this road "was of great public importance, as it was essentially necessary to carry the object Congress had in view, viz: the establishment of a mail route on which reliance could be placed;" that Judge McLean would promply have reimbursed the expense if he had had the power so to do; that the road has been used as a public and a national road ever since it was opened, and has essentially contributed to the speedy and certain transmission of the mail between all the Atlantic States and New Orleans; that he knows of no claim upon the government

which appears to him more equitable than the present claim; and he says, "I flatter myself that the proper authority will do this gentleman justice."

On the 29th of March, 1854, Mr. Adams, from the Committee on Post Offices and Post Roads, in the Senate, made a report in favor of this claim. The argument of the report is as follows: "He (the claimant) claims that his proposal for carrying the mail four years for $14,000 per annum was connected with a condition which, from the nature of the case, could not be separated from it, namely, that the United States were to open the road or agree to pay him $4,000 for doing it. The Postmaster General adopted or established the mail route by Pascagoula, and accepted the proposal of the petitioner for carrying the mail upon it, without saying anything in regard to that part of the proposal of the petitioner which related to opening the road, although he must have known that the mail could not be conveyed on that route without the road being opened. Did not the acceptance by the Postmaster General of that part of the proposal by the petitioner which related to carrying the mail, which he knew could not be performed without the road being first opened, authorize the petitioner to believe that if he constructed the road, he would, in some way, be paid for it? It appears to the committee that it did, and that there was an implied or tacit engagement that the petitioner was, in some way, to be remunerated for his expense in opening the road. It does not appear from any of the correspondence that the department ever claimed or expected that the contractors were to construct the road at their own expense. Was it just or strictly honest in the government to accept one part of the proposition for a contract consisting of two parts, when they knew that the part accepted would not have been offered but in connexion with the part which was not accepted."

Upon the argument of this case the question made was as to the power of the Postmaster General, under the resolution of May 24, 1828, to pay for making the road. As we have before said, the resolution authorized him to adopt the route if he should deem it the most expedient route. He thought it was the most expedient route. Now, to adopt a route for the transportation of the mail where there is no road, means to take the steps necessary to enable the mail to be transported, otherwise the resolution will amount to nothing. The Postmaster General might decline to pay the expense of making the road upon the ground that he had no funds which could be appropriated for that purpose, but it by no means follows that the claimant had not a legal cause of action against the United States. As the resolution authorized the making of the road, its effect was to give validity to the claim of the person who should make it. Any other conclusion would be such a violation of common honesty as would seriously injure the reputation of an individual in the business relations of life. If this were a suit between individuals, and if the plaintiff had performed labor for a defendant under such circumstances, and the latter had received the benefit of the services without objection, no one would venture to deny that in law and justice alike the plaintiff should be compensated. This principle lies at the foundation of all pecuniary transactions between the citizens of the United States, and it is surely

not unreasonable that it should be applied to the dealings between the government and its citizens. In this case the government received the benefit of the labor of the claimant in making the road, and should, upon principles of law and justice, make compensation for it to the claimants.

The evidence proves that the expense of building the road was $8,000; but as the proposal of the claimant was to build it for the sum of $4,000, he should be limited to that sum. This will place him in as good a position as if his proposal had been accepted in terms, so far as relates to the compensation for building the road; and for that sum we report a bill.

The claimants also allege that they are entitled to damages consequent upon the annulment of their contract by the department. But as there is no evidence upon this point, it is not necessary to investigate it.

THOMAS RHODES AND ANOTHER *vs.* THE UNITED STATES.

The opinion of the court was delivered by Chief Justice GILCHRIST.

This claim is now twenty-six years old. It has been before Congress at sixteen sessions. There have been nine favorable reports upon it in the Senate, and it has passed the Senate nine times. It has been once rejected by the House, and at seven sessions there has been no action upon it.

The resolution of Congress of the 24th May, 1828, (4 Stat. at Large, 322,) authorized the Postmaster General to cause to be examined the route from Mobile to Pascagoula, and if, in his opinion, it should be the most expedient route to the city of New Orleans, he was authorized to adopt it in lieu of the then present one from Mobile to New Orleans.

On the 17th of June, 1828, the Postmaster General gave notice that proposals would be received at the department for carrying the mail, three times a week, between Mobile and New Orleans in steamboats. At this time there was no road from Mobile to Pascagoula, and the mail was necessarily transported for the whole distance by water. On the 1st of August, 1828, the Postmaster General requested the postmasters at New Orleans and Mobile to examine the route from Mobile to Pascagoula, and to report to him, among other things, upon the quality of the ground, and to estimate the probable expense of opening a good road for stages.

On the 16th of August, 1828, the claimant wrote to the department, saying, that the route from Mobile to New Orleans, by the way of Pascagoula bay, was much the shortest and most certain way to carry the mail; and saying also, "it must be conveyed thirty or forty miles by land in stages, the residue of the way by steamboats." He then offered to carry the mail, agreeably to the proposals, thrice a week, for the sum of $14,000 per year, and added: "The road from this to Pascagoula to be made by, or at the expense of the United States. The road I will be obligated to make within sixty days from

the time I may receive the notice, for the sum of four thousand dollars, or for one hundred dollars per mile." "The money to be paid on the completion of the work." His letter closes by saying: "In case of our getting the contract, I should like to have the earliest information, or in case I should have the opening of the road."

On the 7th of October, 1828, Mr. Bradley, of the office of mail contracts, wrote the claimant that the Postmaster General had decided to accept his proposal to transport the mail by land and water, between Mobile and New Orleans, at the rate of $14,000 per annum.

The letter of the claimant is free from any reasonable doubt. The substance of it is, that the mail from Mobile to New Orleans, by way of Pascagoula bay, must be conveyed partly by land in stages, and the residue of the way by steamboats; that he would convey the mail for $14,000 per year; that the road to Pascagoula must be made at the expense of the United States; that he would make it within sixty days, for the sum of $4,000, the money to be paid on the completion of the work.

This was clearly a proposal to transport the mail by land and water. The land route was from Mobile to Pascagoula, where the road was to be made; the water route was from Pascagoula to New Orleans. It was so considered by the department, for the acceptance is of a proposal to transport the mail "by land and water." But the proposal is, in substance, to transport the mail by land and water, for $14,000 per year, provided the United States would pay the expenses of making the road over the land route, as there was no road in existence. It was not a proposal to carry the mail for $14,000, by land and water, unconditionally, but if the United States would pay the expenses of making the road. An acceptance of the proposal, upon any reasonable construction, is an acceptance of the proposal with the conditions, unless they are excluded by the terms of the acceptance. Or the transaction may be regarded as an offer by the claimant to transport the mail for $18,000 per year, for the first year, and to build the road; for, in substance, it amounts to that. It was well known by the department that there was no road from Mobile to Pascagoula, and that without such a road the mail between Mobile and New Orleans could not be transported by land and water. According to the claimant's offer, the road was completed by the 15th of December, and on the 17th of December he wrote the department that he should commence running the mail by that time. Now, as his offer was to make the road in sixty days, he should have been informed by the department that the offer was not accepted at once. Instead of that, he received no answer to his letter until he received the letter of the department of the 29th of February, 1829, when he was informed that the department possessed no means to renumerate him, and that the department intended so to inform him on the 29th of December. This, by the way, would have been after the expiration of the time within which he offered to make the road.

The resolution of May 24, 1828, authorized the Postmaster General to adopt the route from Mobile to Pascagoula, if, in his opinion, it should be the most expedient route from Mobile to New Orleans. He caused the route to be examined, and was of the opinion that it

was the most expedient one. He thus had power to adopt the route, and a question arises as to the extent of that power. At that time there was no road over which the mail could be transported. Now, to adopt a route for the transportation of the mail, means to take the steps necessary to cause the mail to be transported over that route; if it does not mean as much as that, the resolution of Congress is nugatory. The Postmaster General had the power to contract with the claimant to transport the mail over that route, and to agree to pay him for such duty $18,000 for the first year, and $14,000 for the remaining years of the existence of the contract. This is the substance of the two letters of the claimant and Mr. Bradley construed together. It was worth more to transport the mail for the first year, over a country where there was no road, than it would be during the years succeeding, and there was no reason why the claimant should not receive a compensation commensurate with the value and difficulty of his services. If the Postmaster General may lawfully pay a larger sum for the transportation of the mail over a difficult and expensive route, than for transporting it over an easy and cheap route, *a fortiori*, he may pay a larger sum for such transportation, where, in addition to conveying the mail, the contractor is compelled to make a road over which to transport it. If he contracts to transport the mail from one given point to another, between which points it is known that no road exists, and that to fulfil his contract he must cut down hills and fill up valleys, and make a road through a wilderness with the trees he finds in his path, and bridge streams, he may, surely, without any violent expansion of the powers of the department, be compensated for such duty and expenses by a sum sufficient to pay him for carrying the mail under such circumstances. He says, in effect, to the department: "I cannot afford to transport the mail for $14,000 per year, because, in addition to the expense of coaches, horses, and drivers, I must incur the expense of putting the road in a passable condition. If you will pay me enough for the first year to enable me to do this, I will carry the mail." We see nothing unreasonable, either in such a proposition, or in its acceptance; and if this cannot be done, the resolution of Congress is idle, and gives the Postmaster General no avaliable authority whatever.

The question of damages will properly be considered hereafter; and we think it is a proper case in which to order testimony to be taken.

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